

0387

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 COUNTY OF LOS ANGELES, CENTRAL DISTRICT  
3  
4  
5 GREG DEVRIES, JASON )  
WOOLLEY, CHRIS SIMON, )  
6 MATTIAS NORSTROM, VLADIMIR )  
TSYPLAKOV, JAY MCKEE, )  
7 RAYMOND MURRAY, GLEN MURRAY, )  
BRYAN BERARD, DARRYL SYDOR, )  
8 DIMITRI KHRISTICH, SERGEI )  
GONCHAR, MICHAEL PECA AND )  
9 JOZEF STUMPEL, TYSON NASH, )  
BRIAN CAMPBELL, STEVE )  
10 RUCCHIN, TURNER STEVENSON, )  
)  
11 PLAINTIFFS, )  
)  
12 VS. ) CASE NO. BC416081  
)  
13 KENNETH A. JOWDY, AN )  
INDIVIDUAL; AND DOES 1 )  
14 THROUGH 100, INCLUSIVE, )  
)  
15 DEFENDANTS. )  
\_\_\_\_\_ )

16

17 VOLUME II

18

19 DEPOSITION OF KENNETH JOWDY, TAKEN  
20 ON BEHALF OF THE PLAINTIFFS, AT 9255  
21 DOHENY ROAD, SUITE 602, WEST HOLLYWOOD,  
22 CALIFORNIA, COMMENCING AT 10:11 A.M.,  
23 WEDNESDAY, JANUARY 6, 2010, BEFORE  
24 ALEJANDRIA E. KATE, CSR NUMBER 11897.  
25

0388

1 APPEARANCES OF COUNSEL:  
2  
3 FOR THE PLAINTIFFS:  
4 RONALD RICHARDS & ASSOCIATES, A.P.C.  
BY: RONALD RICHARDS, ESQ.  
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9

10 FOR THE DEFENDANT KENNETH A. JOWDY:  
11 CALDWELL LESLIE & PROCTOR, P.C.  
12 BY: ROBYN C. CROWTHER, ESQ.  
13 1000 WILSHIRE BOULEVARD  
14 SUITE 600  
15 LOS ANGELES, CALIFORNIA 90017-2463  
16 213.629.9040  
17 CROWTHER@CALDWELL-LESLIE.COM

18 ALSO PRESENT:  
19 GREG DEVRIES  
20 JASON WOOLLEY  
21 PHIL KENNER  
22 JOHN KAISER  
23 TIM BARKER, LEGAL VIDEO SERVICES  
24  
25

0389

1	I N D E X		
2			
3	DEPONENT:	EXAMINED BY:	PAGE:
4	KENNETH JOWDY	MR. RICHARDS	391
5		(AFTERNOON SESSION)	516
6			
7			
8			

9 EXHIBITS FOR IDENTIFICATION:  
10 (NONE)  
11  
12  
13

14	QUESTIONS UNANSWERED BY THE DEPONENT:	
15	PAGE:	LINE:
16	409	13
	410	2
17	410	7
	410	15
18	422	15
	426	11
19	427	9
	428	19
20	431	16
	442	12
21	485	10
	559	14
22	681	20

23

24

25

0390

1 WEST HOLLYWOOD, CALIFORNIA, WEDNESDAY  
2 JANUARY 6, 2010  
3 10:11 A.M.  
4

5

6 THE VIDEOGRAPHER: AND GOOD  
7 MORNING. WE'RE ON THE VIDEOTAPE RECORD, BEGINNING  
8 TAPE NUMBER 1 OF VOLUME NUMBER II, 10:11 A.M.

9

10 COUNSEL, PLEASE MAKE VERBAL  
11 INTRODUCTIONS FOR THE RECORD.  
12 MR. RICHARDS: RONALD RICHARDS, FOR  
13 THE PLAINTIFFS.

14

15 MS. CROWTHER: ROBYN CROWTHER, FOR  
16 KEN JOWDY.

17

18 THE VIDEOGRAPHER: VERY GOOD.  
19 WILL THE COURT REPORTER PLEASE  
20 ADMINISTER THE OATH.

21

22 KENNETH JOWDY,  
23 CALLED AS A DEPONENT AND DULY SWORN IN BY  
24 THE DEPOSITION OFFICER, WAS EXAMINED  
25 AND TESTIFIED AS FOLLOWS:

26

27 ///

28 ///

29 ///

0391

1 DEPOSITION OFFICER: PLEASE RAISE  
2 YOUR RIGHT HAND.  
3 DO YOU AFFIRM, UNDER PENALTY OF  
4 PERJURY THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
5 IN THE FOLLOWING DEPOSITION PROCEEDING SHALL BE  
6 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT  
7 THE TRUTH?

8

9 THE DEPONENT: YES.  
10 DEPOSITION OFFICER: THANK YOU.

11

12 EXAMINATION

13 BY MR. RICHARDS:

14 Q. OKAY. GOOD MORNING, AGAIN,  
15 MR. JOWDY.

16

17 A. MORNING.

18

19 Q. HOW ARE YOU?

20

21 A. GOOD. HOW ARE YOU?  
22 Q. REMEMBER THE ADMONITIONS I GAVE YOU  
23 YESTERDAY, THE VERY SHORT ONES, RELATED TO YOUR  
24 MENTAL HEALTH AND IF THERE WAS ANYTHING -- HAS  
25 ANYTHING CHANGED AS TO WHERE YOU WOULDN'T BE ABLE

22 TO GIVE THE SAME COMPETENT, TRUTHFUL TESTIMONY  
23 FROM YESTERDAY?

24 A. NO.

25 Q. OKAY. ALL RIGHT. IN YOUR EARLIER

0392

1 TESTIMONY, YOU STATED THAT TOMMY CONSTANTINE WAS  
2 SUPPOSED TO TAKE OVER AND START PAYING FOR THE  
3 FALCON AND DIDN'T; IS THAT CORRECT?

4 A. THROUGH AN E-MAIL THROUGH PHIL,  
5 THAT WAS THE ARRANGEMENT THAT I UNDERSTOOD, YES.

6 Q. DID TOMMY CONSTANTINE ASK YOU OR  
7 MARK THALMANN FOR A BILL OF SALE OR PURCHASE  
8 AGREEMENT FOR THE FALCON BEFORE HE WOULD START  
9 CONTRIBUTING FINANCIALLY TOWARDS THE PURCHASE OR  
10 REFURBISHMENT OF THE AIRPLANE?

11 A. HE ASKED FOR A BILL OF SALE, YES.

12 Q. OKAY. AND DID YOU PROVIDE ONE?

13 A. I DIDN'T THINK I COULD WITHOUT  
14 SELLING HIM THE PLANE.

15 Q. AND WOULD YOU -- WHAT WOULD BE YOUR  
16 EXPECTATION FOR HIM TO START PAYING FINANCIALLY  
17 TOWARDS THE PURCHASE OR REFURBISHMENT WITHOUT A  
18 BILL OF SALE?

19 A. I'M NOT A LAWYER, BUT I DON'T -- I  
20 CONSULTED WITH ONE. I WASN'T SURE HOW DO I GIVE  
21 HIM A BILL OF SALE WITHOUT HIM BUYING --  
22 PURCHASING THE PLANE.

23 Q. DID YOU OWE ANY MONEY AT THE TIME  
24 TO THE MAINTENANCE FACILITY THAT WAS WORKING ON  
25 THE FALCON DURING THE TIME PERIOD WHERE

0393

1 MR. CONSTANTINE WAS CONTEMPLATING BUYING THE  
2 AIRPLANE?

3 A. DID I?

4 Q. DID THE DIAMANTE AIR?

5 A. WHAT MAINTENANCE FACILITY?

6 Q. WHERE THE PLANE WAS KEPT.

7 A. WHERE IS THAT?

8 Q. WELL, WASN'T THE PLANE GROUNDED AT  
9 THE TIME WHEN YOU WERE -- STOPPED MAKING PAYMENTS?

10 A. IT WASN'T GROUNDED WHEN  
11 TOMMY CONSTANTINE TOOK CONTROL OF THE PLANE.

12 WHERE HE TOOK IT, I -- I WASN'T A  
13 PART OF THAT. SO IF YOU CAN TELL ME WHAT  
14 MAINTENANCE FACILITY HE TOOK IT TO -- ALTHOUGH I  
15 WASN'T RESPONSIBLE -- OR DIAMANTE AIR, I DON'T  
16 THINK, SHOULD HAVE BEEN RESPONSIBLE FOR ANYTHING  
17 THAT TOMMY CONSTANTINE DID AT THE TIME.

18 BUT HE -- WHEN HE TOOK CONTROL OF  
19 THE PLANE, IT WAS AIRWORTHY.

20 Q. WAS THERE ANY BALANCE OWED TO THE  
21 MAINTENANCE -- ANY MAINTENANCE FACILITIES AT THE  
22 TIME HE TOOK CONTROL OF THE PLANE THAT YOU'RE  
23 AWARE OF?

24 A. NOT THAT I KNOW OF, NO.

25 Q. AND ARE YOU AWARE THAT THE SALE OF

0394

1 THE 421 CESSNA WENT TOWARDS PAYMENTS OF PAST DUE  
2 MAINTENANCE FACILITIES?

3 A. NO.

4 Q. I'M GOING TO -- YOU MENTIONED  
5 YESTERDAY, YOU TESTIFIED ABOUT THAT THIS LAWSUIT  
6 SORT OF HAD SOME NEGATIVE RAMIFICATIONS FOR YOU.

7 DID YOU -- DID YOU PERSONALLY  
8 INSTIGATE OR GENERATE ANY NEGATIVE MEDIA ARTICLES  
9 IN THE NEW YORK POST OR DAILY NEWS REGARDING  
10 MR. KENNER OR MR. CONSTANTINE?

11 A. NO.

12 Q. DID YOU DIRECT ANYBODY AT YOUR  
13 BEHALF?

14 A. NO.

15 Q. DID YOU EVER COMMUNICATE WITH  
16 TERRI THOMPSON OF THE NEW YORK DAILY NEWS?

17 A. YES.

18 Q. OR RICHARD JOHNSON, PRIOR TO THE  
19 ARTICLES BEING PUBLISHED?

20 A. NO. WAIT. PRIOR TO WHAT ARTICLES?  
21 I NEVER COMMUNICATED WITH RICHARD JOHNSON.

22 Q. DID YOU TALK TO -- DID YOU TALK TO  
23 TERRI THOMPSON PRIOR TO THE NEW YORK DAILY NEWS  
24 ARTICLE BEING PUBLISHED?

25 A. NO, I DON'T BELIEVE SO.

0395

1 Q. WHEN DID YOU TALK TO HER?

2 A. AFTER THE NEW YORK POST ARTICLE WAS  
3 WRITTEN ABOUT THIS LAWSUIT.

4 Q. OKAY. DID -- DO YOU KNOW IF  
5 TOM HARVEY SPOKE WITH ANY OF THEM?

6 A. I DON'T KNOW.

7 Q. DO YOU KNOW WHO ADRIENNE MOORE IS?

8 A. YES.

9 Q. WHO IS SHE?

10 A. SHE WORKED FOR DIAMANTE CABO SAN  
11 LUCAS.

12 Q. AND WHERE DID YOU MEET HER?

13 A. IN LAS VEGAS.

14 Q. AND WHY DID YOU HIRE HER?

15 A. I NEEDED SOMEONE JUST TO BE IN THE  
16 OFFICE, AN ASSISTANT, JUST TO DO EXPENSES, TRAVEL  
17 ARRANGEMENTS, ET CETERA.

18 Q. DID YOU -- DID SHE PROVIDE A  
19 RESUME?

20 A. YES.

21 Q. AND YOU INTERVIEWED HER PERSONALLY?

22 A. I BELIEVE SO.

23 Q. DID YOU HIRE HER -- HOW LONG AFTER  
24 YOU MET HER DID YOU HIRE HER?

25 A. I DON'T KNOW.

0396

1 Q. WASN'T IT THE NIGHT -- THE NIGHT  
2 YOU MET HER, YOU HIRED HER THE NEXT DAY?

3 A. I DON'T THINK SO, NO.

4 Q. HOW MUCH DID YOU PAY HER?

5 A. I BELIEVE 25,000 DOLLARS A YEAR.

6 Q. AND DID YOU -- IF YOU KNOW, DID SHE  
7 HAVE A SEXUAL RELATIONSHIP WITH ROGER CLEMENS?

8 A. I DON'T KNOW.

9 Q. DID SHE -- DOES HE STILL WORK FOR  
10 YOU?

11 A. NO.

12 Q. WHO'S SHAWN HUGHES?

13 A. SHE WORKED FOR, I BELIEVE -- I'M  
14 NOT SURE WHAT ENTITY SHE WORKED. BUT SHE WAS PAID  
15 THROUGH DIAMANTE DEL MAR, I BELIEVE.

16 Q. DID YOU EVER INVITE THE PORN STAR  
17 ABBY ROSE TO ONE OF YOUR GOLF -- GOLF OUTINGS OR  
18 PARTIES?

19 A. NO.

20 Q. DID SHE EVER ATTEND?

21 A. NOT THAT I KNOW OF.

22 Q. AT THE TIME LEHMAN CLOSED, WHO  
23 OWNED THE SOMERSET ENTITY THAT OWNS AN INTEREST IN  
24 THE CABO PROJECT?

25 MS. CROWTHER: I THINK THAT'S ASKED

0397

1 AND ANSWERED YESTERDAY.

2 THE DEPONENT: YEAH. I DIDN'T  
3 RECALL HIS LAST NAME. THAT I KNOW OF, I DIDN'T  
4 RECALL HIS LAST NAME.

5 BY MR. RICHARDS:

6 Q. OKAY. YEAH, WAS THAT -- THAT  
7 WAS -- THE QUESTIONS I HAD WERE RELATED TO MASOOD  
8 BHATTI, B-H-A-T-T-I.

9 SO YOU DON'T KNOW WHO THE  
10 PRINCIPALS OF THAT ENTITY ARE?

11 A. I SAID I DIDN'T RECALL HIS LAST  
12 NAME.

13 Q. SINCE YESTERDAY, DID YOU -- WERE  
14 YOU ABLE TO RECALL IT?

15 A. I DIDN'T.

16 Q. IS THE PRINCIPAL'S DAUGHTER  
17 CONNECTED TO MASOOD BHATTI IN ANY WAY, IF YOU  
18 KNOW?

19 MS. CROWTHER: OBJECTION. HE  
20 DOESN'T KNOW WHO THE PRINCIPAL IS.  
21 BY MR. RICHARDS:

22 Q. YOU DON'T -- YOU ONLY KNOW --  
23 (SPEAKING SIMULTANEOUSLY.)

24 THE DEPONENT: I DO. I DON'T -- I  
25 DON'T -- WHAT DO YOU MEAN, "CONNECTED"?

0398

1 BY MR. RICHARDS:

2 Q. IS THE PRINCIPAL RELATED TO HIS  
3 DAUGHTER IN ANY WAY?

4 DO YOU KNOW WHO THE PRINCIPAL IS AS  
5 A PERSON OR --

6 A. YES.

7 Q. DID THEY HAVE ANY RELATIONSHIP TO  
8 ANY FAMILY MEMBER OF MASOOD BHATTI?

9 A. NO.

10 Q. DO YOU KNOW IF THEY HAVE ANY --

11 A. NOT THAT I KNOW OF.

12 Q. OKAY. WAS -- WAS MASOOD BHATTI  
13 INSTRUMENTAL IN YOUR RECEIVING THE 650,000 DOLLAR  
14 COMMISSION FROM LEHMANS?

15 MS. CROWTHER: OBJECTION.  
16 (SPEAKING SIMULTANEOUSLY.)

17 THE DEPONENT: I HAVE NO IDEA.

18 MS. CROWTHER: IT'S ALSO VAGUE AS  
19 TO THE TERM "YOU."

20 BY MR. RICHARDS:

21 Q. WELL, BAJA -- SORRY. BAJA  
22 DEVELOPMENT.

23 DID -- WHO ARRANGED FOR THE  
24 COMMISSION, THEN, IF YOU KNOW?

25 A. I DON'T KNOW.

0399

1 Q. YOU DON'T KNOW WHO GAVE YOU A  
2 650,000 DOLLAR REFERRAL FEE?

3 A. LEHMAN BROTHERS.

4 Q. BUT, I MEAN, WHO WAS THEIR PERSON  
5 THAT --

6 (SPEAKING SIMULTANEOUSLY.)

7 THE DEPONENT: THERE'S SEVERAL  
8 PEOPLE THAT I DEALT WITH THERE.

9 BY MR. RICHARDS:

10 Q. JUST FOCUS ON THE COMMISSION,  
11 THOUGH.

12 WHO AUTHORIZED THE COMMISSION?

13 A. I DON'T KNOW.

14 Q. WHO -- HOW DID YOU COME TO THE TERM  
15 OF THE COMMISSION?

16 A. WELL, IT'S -- IT WAS A 1 PERCENT  
17 COMMISSION. I DON'T KNOW WHO AUTHORIZED IT. I  
18 DON'T KNOW.

19 I'VE TALKED TO SEVERAL PEOPLE  
20 THERE. I DON'T KNOW WHO SIGNED OFF ON IT. I  
21 DON'T KNOW WHAT THE PROCESS IS.

22 Q. WELL, WHO DID YOU NEGOTIATE WITH?

23 A. I DON'T BELIEVE I NEGOTIATED WITH  
24 ANYONE. LIKE I SAID, I DEALT WITH SEVERAL PEOPLE  
25 THERE. I DON'T KNOW.

0400

1 Q. WELL, CAN YOU TELL ME WHO THOSE  
2 PEOPLE WERE THAT YOU REMEMBER?

3 A. THE NAME OF PEOPLE I KNOW AT LEHMAN  
4 BROTHERS?

5 Q. NO. JUST THAT WERE INVOLVED WITH  
6 THE COMMISSION.

7 A. THE PEOPLE I KNOW AT LEHMAN  
8 BROTHERS.

9 Q. WHO IS THAT?

10 A. MASOOD BHATTI, LOIS BRAMLEY,  
11 KEN COHEN, TOM NOLAN.

12 Q. ANYBODY ELSE?

13 A. I'M TRYING TO THINK OF THAT TIME  
14 FRAME. I DON'T --

15 Q. ALL RIGHT. TAKE YOUR TIME.

16 A. I DON'T KNOW.

17 Q. AFTER -- DID YOU WORK WITH ANYBODY  
18 ELSE AT LEHMAN TO FACILITATE THE LEHMAN DEAL?

19 MS. CROWTHER: OBJECTION. VAGUE AS  
20 TO "THE LEHMAN DEAL."

21 ARE YOU TALKING ABOUT THE  
22 COMMISSION DEAL OR HIS -- OR THE LOAN TO DIAMANTE  
23 CABO SAN LUCAS?

24 MR. RICHARDS: THE LOAN TO DIAMANTE  
25 CABO SAN LUCAS.

0401

1 THE DEPONENT: YES. ANYONE ELSE  
2 OTHER THAN WHO, THE PEOPLE I JUST MENTIONED?  
3 BY MR. RICHARDS:

4 Q. YEAH.

5 A. THE SEVERAL PEOPLE I JUST  
6 MENTIONED?

7 Q. YES.

8 A. ANTHONY BARSANTE MAYBE.

9 Q. AFTER LEHMAN WENT BANKRUPT, DID YOU  
10 HIRE MASOOD BHATTI IN ANY CAPACITY?

11 A. NO.



12 Q. ANY OF YOUR ENTITIES?

13 A. NO.

14 Q. BY THE WAY, JUST FOR THE -- SO WE  
15 GET THIS CLEARED UP.

16 WHEN I SAY "YOU," I MEAN YOU OR ANY  
17 ENTITY YOU HAVE AN OWNERSHIP INTEREST, A  
18 MANAGERIAL POSITION OR CONTROL, EITHER LEGALLY OR  
19 EQUITABLY. IS THAT --

20 MS. CROWTHER: OBJECTION. THAT'S  
21 NOT ACCEPTABLE. IT'S COMPLETELY COMPOUND.

22 YOU CAN ASK HIM ABOUT HIS ENTITIES  
23 OR HIM PERSONALLY, BUT YOU HAVE TO MAKE EACH  
24 QUESTION CLEAR. THAT'S ABOUT 15 DIFFERENT  
25 ENTITIES THERE.

0402

1 MR. RICHARDS: WELL, DO YOU WANT ME  
2 TO BREAK IT UP EACH TIME?

3 MS. CROWTHER: I DO.

4 MR. RICHARDS: ALL RIGHT.

5 BY MR. RICHARDS:

6 Q. SO DID YOU HIRE MASOOD BHATTI  
7 PERSONALLY?

8 A. NO.

9 Q. DID ANY OF THE ENTITIES THAT YOU  
10 HAVE OWNERSHIP INTEREST HIRE HIM?

11 A. NO.

12 Q. HAS MASOOD EVER BEEN COMPENSATED BY  
13 YOU OR ANY OF THE ENTITIES YOU CONTROL FOR ANY  
14 REASON?

15 A. NO.

16 Q. DID MR. KENNER INTRODUCE YOU TO  
17 LEHMAN THROUGH HIS CONTACTS?

18 A. THROUGH A MAN NAMED JEFF KESWIN  
19 (PHONETICALLY).

20 Q. WITHOUT MR. KENNER'S HELP, DO YOU  
21 THINK YOU WOULD HAVE EVER HAD ACCESS TO LEHMAN AT  
22 THAT LEVEL?

23 A. I DON'T KNOW.

24 Q. PRIOR TO MR. KENNER'S INTRODUCTION,  
25 DID YOU EVER HAVE ACCESS TO LEHMAN?

0403

1 A. I'M SURE THERE WAS ACCESS. I  
2 DIDN'T KNOW ANYBODY AT LEHMAN. I DON'T KNOW WHAT  
3 YOU MEAN BY "HAVE ACCESS."

4 Q. SO PRIOR TO THAT, YOU DIDN'T HAVE  
5 ANY RELATIONSHIP WITH LEHMAN?

6 A. NO.

7 Q. ISN'T IT TRUE THAT MR. KENNER AND  
8 HIS CLIENTS PROVIDED THE SEED MONEY NECESSARY FOR  
9 LEHMAN TO WRITE THE MONEY FOR CABO?

10 MS. CROWTHER: OBJECTION. CALLS  
11 FOR SPECULATION. LACKS FOUNDATION.

12 THE DEPONENT: EXPLAIN WHAT YOU  
13 MEAN.

14 BY MR. RICHARDS:

15 Q. IF MR. KENNER DIDN'T BRING YOU HIS  
16 CLIENTS TO -- TO GIVE YOU THAT INITIAL MONEY,  
17 ISN'T IT TRUE THAT YOU WOULD -- THAT YOUR COMPANY  
18 WOULD HAVE NEVER BEEN ABLE TO HAVE ENOUGH CAPITAL  
19 TO HAVE SOMETHING TO SELL TO LEHMAN TO GIVE  
20 THEM -- GIVE THE COMPANIES THE LOAN?

21 MS. CROWTHER: OBJECTION.  
22 INCOMPLETE HYPOTHETICAL AND CALLS FOR SPECULATION.

23 THE DEPONENT: SHOULD I ANSWER? I  
24 DON'T HAVE A PROBLEM ANSWERING.

25 MS. CROWTHER: YOU CAN ANSWER IT,

0404

1 YES. I'M JUST STATING MY OBJECTIONS.

2 THE DEPONENT: I COMPLETELY DON'T  
3 UNDERSTAND THE QUESTION. IT'S LIKE ME SAYING IF I  
4 DIDN'T BRING THE KNOWLEDGE OF THE PROPERTY OR  
5 CONSTRUCT THE DEAL THAT I DEALT WITH PHIL, WOULD  
6 THE DEAL HAVE GOTTEN DONE.

7 THERE'S TWO PARTS TO THE DEAL. I  
8 BROUGHT ONE PART. PHIL BROUGHT ANOTHER PART. SO  
9 WITHOUT EITHER PART -- IF YOU WANT ME TO SAY NO --  
10 YES. I DON'T KNOW. WITHOUT EITHER PART, IT  
11 DOESN'T HAPPEN, SO ...

12 BY MR. RICHARDS:

13 Q. ALL RIGHT. SO PHIL WAS AN INTEGRAL  
14 PART OBVIOUSLY?

15 A. YES. AND ...

16 Q. ALL RIGHT. DID -- WAS THERE A --  
17 WAS THERE A PARCEL NEXT TO THE CABO PROPERTY THAT  
18 YOU CONSIDERED BUYING?

19 A. YES.

20 Q. AND DID MR. KENNER AND HIS CLIENTS  
21 PROVIDE THE DEPOSIT MONEY FOR THE OPTION TO  
22 PURCHASE THE LAND NEXT TO THE CABO PROPERTY?

23 A. I BELIEVE SO.

24 Q. WAS IT ABOUT 72,000?

25 A. I BELIEVE SO. I DON'T REMEMBER.

0405

1 Q. AND DID YOU PURCHASE THE LAND NEXT  
2 TO THE CABO PROJECT?

3 A. NO.

4 Q. WHY DIDN'T YOU PURCHASE IT?

5 A. AT THE TIME WE HAD NOT CLOSED ON  
6 THE EXISTING PARCEL, SO -- AND IT WAS -- WOULD  
7 HAVE BEEN PURCHASED UNDER THE SAME ARRANGEMENTS

8 WITH MR. KENNER.

9 AND HE WAS HAVING DIFFICULTIES THE  
10 FIRST TIME BRINGING THE SEED MONEY. AND WE HADN'T  
11 CLOSED ON IT YET, SO IT WOULDN'T HAVE BEEN WISE AT  
12 THE TIME, WE FELT, TO GO FORWARD.

13 Q. AND DO YOU KNOW WHAT HAPPENED TO  
14 THE 72,000 DOLLAR DEPOSIT?

15 A. I DON'T.

16 Q. SO THIS -- WHEN YOU USED THE LEHMAN  
17 CONTACTS THAT WERE PROVIDED TO YOU BY MR. KENNER  
18 AND THE FUNDS THAT WERE PROVIDED TO YOU BY  
19 MR. KENNER TO FACILITATE THIS RELATIONSHIP WITH  
20 LEHMAN WHICH RESULTED IN THE REFERRAL FEE OF  
21 650,000 DOLLARS, YOU DIDN'T SHARE ANY OF THAT WITH  
22 HIS -- KENNER AND HIS CLIENTS?

23 MS. CROWTHER: OBJECTION. THAT  
24 MISSTATES TESTIMONY AND IS COMPOUND AND  
25 ARGUMENTATIVE.

0406

1 THE DEPONENT: I'D HAVE TO GO SEE  
2 WHERE IT WAS SPENT. I'M SURE A LOT OF IT WAS  
3 SPENT ON DIAMANTE DEL MAR AND OTHER THINGS THAT  
4 NEEDED FUNDS, BUT I DON'T KNOW WHERE IT WAS SPENT.  
5 BY MR. RICHARDS:

6 Q. WELL, YOU DIDN'T -- ISN'T IT TRUE,  
7 THOUGH, YOU DIDN'T DISCLOSE THAT YOU RECEIVED THIS  
8 MONEY UNTIL AFTER YOUR RELATIONSHIP WITH  
9 MR. KENNER HAD SEPARATED?

10 A. THAT'S NOT TRUE.

11 Q. WHEN DID YOU DISCLOSE THAT --

12 A. I TOLD PHIL. I DON'T KNOW WHEN,  
13 BUT I TOLD PHIL AT THE TIME.

14 Q. AND YOU DIDN'T -- AND YOU DIDN'T  
15 FEEL YOU HAD AN OBLIGATION TO SHARE ANY OF THAT  
16 INCOME WITH KENNER AND HIS CLIENTS?

17 A. LIKE I SAID, I DON'T KNOW HOW THE  
18 MONEY WAS SPENT, BUT --

19 Q. ALL RIGHT. YESTERDAY YOU TESTIFIED  
20 THAT YOU'D BEEN MAKING ABOUT 240,000 DOLLARS A  
21 YEAR.

22 DO YOU REMEMBER THAT TESTIMONY?

23 A. YES.

24 Q. AND THAT YOU HAD BEEN PAYING -- OR  
25 THAT -- YOU SAID SOMEBODY, YOU OR YOUR ENTITIES,

0407

1 WAS PAYING 40,000 PER MONTH ON THE K.S.I. LOAN.  
2 REMEMBER THAT?

3 A. YES.

4 Q. AND THEN YOU HAD BEEN PAYING 15,000  
5 A MONTH ON THE AIRPLANE LOANS AND ABOUT 8,000 A

6 MONTH FOR THIS MORTGAGE IN VEGAS.  
7 AND WHAT I'M --  
8 A. I NEVER SAID THOSE THINGS.  
9 Q. WELL, HOW MUCH WERE YOU PAYING --  
10 A. WELL, FIRST OF ALL, THAT WASN'T MY  
11 TESTIMONY. I NEVER SAID ANYTHING ABOUT 15,000. I  
12 NEVER SAID ANYTHING ABOUT 8,000.  
13 SO WHEREVER YOU GOT THAT WASN'T  
14 FROM MY TESTIMONY, I DON'T BELIEVE. I'D HAVE TO  
15 LOOK AT THE RECORD --  
16 Q. WELL, HOW MUCH --  
17 A. -- AND EVERYTHING WE TALKED ABOUT.  
18 Q. OKAY. HOW MUCH WERE YOU PAYING ON  
19 THE AIRPLANE MAINTENANCE?  
20 MS. CROWTHER: OBJECTION. VAGUE AS  
21 TO TIME.  
22 BY MR. RICHARDS:  
23 Q. DURING THE TIME THAT DIAMANTE AIR  
24 HAD THE PLANE.  
25 A. I DON'T RECALL.  
0408  
1 MS. CROWTHER: WHICH PLANE?  
2 MR. RICHARDS: THERE ARE TWO PLANES  
3 THAT HE TESTIFIED TO.  
4 MS. CROWTHER: RIGHT. BUT YOU JUST  
5 SAID "PLANE." DURING THE TIME THAT DIAMANTE AIR  
6 HAD THE PLANE, WHICH PLANE?  
7 BY MR. RICHARDS:  
8 Q. THE AIRPLANE LOANS. LET ME JUST  
9 FOCUS ON THE LOANS.  
10 A. I DON'T RECALL.  
11 Q. WAS THE MONEY COMING FROM VARIOUS  
12 ENTITIES THAT YOU OWNED TO PAY FOR THE K.S.I. LOAN  
13 OR FROM ONE ENTITY?  
14 A. I DON'T RECALL.  
15 Q. BUT YOU WERE -- WHEN YOU SAY YOU  
16 WERE PAYING FOR THESE LOANS -- YOU KNOW HOW YOU  
17 SAID YOU WERE MAKING THE AIR -- YOU MADE THE  
18 AIRPLANE PAYMENTS FOR A YEAR AND A HALF AFTER --  
19 A. I SAID IT WAS THROUGH ENTITIES. I  
20 BELIEVE IT WAS COMING FROM LEGACY PROPERTIES.  
21 Q. AND LEGACY PROPERTIES WAS GETTING  
22 MONEY FROM -- FROM VARIOUS -- WAS LEGACY  
23 PROPERTIES -- THAT'S THE PROPERTY COMPANY THAT  
24 GETS THE -- THAT WAS GETTING A DRAW FROM THOSE TWO  
25 OUT-OF-STATE PROJECTS AND GETTING MONEY FROM  
0409  
1 LEHMANS?  
2 A. A DEVELOPMENT FEE.  
3 Q. A DEVELOPMENT FEE.

4 SO BASICALLY YOU WERE TAKING MONEY  
5 FROM OTHER COMPANIES THAT YOU OWN AND JUST TRYING  
6 TO SERVICE SOME OF THIS DEBT; IS THAT FAIR TO SAY?

7 A. BASICALLY.

8 Q. OKAY. HAVE YOU PERSONALLY EVER --  
9 HAVE YOU OR ANYBODY AT YOUR DIRECTION EVER FILED  
10 ANY COMPLAINTS AGAINST PHIL KENNER WITH ANY  
11 FEDERAL AGENCIES?

12 A. I DON'T BELIEVE SO.

13 Q. HAVE -- HAS -- HAVE YOU EVER  
14 DIRECTED TOM HARVEY TO HAVE ANY COMMUNICATIONS ON  
15 YOUR BEHALF?

16 MS. CROWTHER: OBJECTION.  
17 ATTORNEY-CLIENT.

18 MR. RICHARDS: NO. JUST "YES" OR  
19 "NO."

20 MS. CROWTHER: NO. IT'S AN  
21 ATTORNEY-CLIENT COMMUNICATION.

22 YOU ASKED HIM A SUBSTANTIVE  
23 QUESTION.

24 DON'T ANSWER THAT QUESTION.

25 ///

0410

1 BY MR. RICHARDS:

2 Q. HAVE YOU EVER -- HAVE YOU EVER  
3 ASKED TOM HARVEY TO FILE A COMPLAINT?

4 MS. CROWTHER: SAME OBJECTION.  
5 SAME INSTRUCTION.

6 BY MR. RICHARDS:

7 Q. WHAT ABOUT LOUIS FREEH?

8 MS. CROWTHER: SAME OBJECTION.  
9 SAME INSTRUCTION.

10 BY MR. RICHARDS:

11 Q. IS LOUIS FREEH REPRESENTING YOU IN  
12 ANY CAPACITY AT THIS POINT IN ANY LITIGATION  
13 ANYWHERE?

14 A. HE'S REPRESENTING ME, YES.

15 Q. WHAT SPECIFICALLY IS HE  
16 REPRESENTING YOU IN?

17 MS. CROWTHER: OBJECTION. CALLS  
18 FOR ATTORNEY-CLIENT COMMUNICATIONS AND WORK  
19 PRODUCT.

20 I INSTRUCT YOU NOT TO ANSWER.

21 MR. RICHARDS: I JUST WANT TO KNOW  
22 WHAT HE'S REPRESENTING.

23 MS. CROWTHER: HE TESTIFIED TO THAT  
24 YESTERDAY. HE TESTIFIED THAT IT WAS AS TO THE  
25 GRAND JURY INVESTIGATION AND THE S.E.C.

0411

1 INVESTIGATION.

2 MR. RICHARDS: OKAY.

3 BY MR. RICHARDS:

4 Q. I ASKED YOU IF YOU WERE AWARE OF  
5 ANY LAWSUITS FILED OR PENDING YESTERDAY, AND  
6 YOU -- YOU PROVIDED SOME TESTIMONY.

7 ARE -- ARE YOU AWARE THAT THERE'S A  
8 CLAIM FROM JOZEF STUMPEL FOR A 1.6 MILLION DOLLAR  
9 LOAN TO PROPIEDADES D.D.M.?

10 A. NO.

11 Q. DID THEY BORROW MONEY FROM  
12 JOZEF STUMPEL?

13 A. I DON'T BELIEVE SO.

14 Q. WHAT -- HOW -- DO YOU KNOW IF  
15 JOZEF STUMPEL EVER GAVE ONE OF YOUR ENTITIES 1.6  
16 MILLION DOLLARS?

17 A. HE DID.

18 Q. AND WAS THAT PAID BACK?

19 A. NO.

20 Q. AND WHEN IS IT GOING TO BE PAID  
21 BACK?

22 A. I DON'T KNOW.

23 Q. WHAT ABOUT MATTIAS NORSTROM, DID HE  
24 GIVE 400,000 DOLLARS TO LOR MANAGEMENT FOR THE  
25 C.S.L. AIRPORT IN MEXICO?

0412

1 A. I THINK SO.

2 Q. HAS THAT BEEN PAID BACK?

3 A. NO.

4 Q. DID MATTIAS NORSTROM GIVE -- WAS  
5 THERE -- THERE WAS A -- YOU TESTIFIED YESTERDAY  
6 THAT THERE WAS A 500,000 DOLLAR CHECK FROM BAJA  
7 DEVELOPMENT CORP. THAT WAS ISSUED TO  
8 MATTIAS NORSTROM BUT NEVER CASHED.

9 DO YOU REMEMBER THAT?

10 A. YES.

11 Q. IS THAT GOING TO -- IS THAT CHECK  
12 GOING TO BE MADE GOOD AT ANY TIME THAT YOU'RE  
13 AWARE OF?

14 A. I DON'T KNOW.

15 Q. GLEN -- GLEN MURRAY SPENT 800,000  
16 DOLLARS FOR THE PALM UNITS THAT -- THAT -- THAT  
17 THERE'S -- THAT THERE'S LITIGATION WITH YOU.

18 ARE YOU AWARE OF THAT LITIGATION?

19 A. YES.

20 Q. AND THEN THERE WAS A -- THERE WAS A  
21 LAWSUIT THAT WE FOUND WITH SOME OF THESE HAWAIIAN  
22 ENTITIES IN FEDERAL COURT IN ARIZONA FOR 5.5  
23 MILLION DOLLARS.

24 ARE YOU AWARE OF THAT LAWSUIT?

25 A. WHAT LAWSUIT IS THAT?

0413

1 Q. A LAWSUIT IN PHOENIX.

2 A. WHO -- WHO'S --

3 Q. SOME OF THOSE HAWAIIAN ENTITIES,  
4 LIKE ULA MAKIKA AND LITTLE ISLE 4, AND I THINK  
5 PHIL KENNER. I THINK MAYBE JUST THOSE.

6 ARE YOU FAMILIAR WITH THAT  
7 LITIGATION AT ALL?

8 A. ARE YOU STAYING THAT'S A PENDING  
9 LITIGATION?

10 Q. NO. JUST WAS THERE A LAWSUIT  
11 RELATED --

12 A. THERE WAS, YES.

13 Q. AND WHAT HAPPENED TO THAT LAWSUIT?

14 A. IT'S BEEN DISMISSED.

15 Q. YOU KNOW WHY IT WAS DISMISSED?

16 A. I KNOW IT'S BEEN DISMISSED.

17 Q. I'M JUST ASKING YOU BECAUSE,  
18 BELIEVE IT OR NOT, I DON'T FOLLOW EVERY SINGLE  
19 THING.

20 A. THAT'S FINE.

21 Q. I MEAN --

22 A. I HAVE NO PROBLEM.

23 Q. YEAH. I JUST WANT -- I FEEL  
24 THAT -- I JUST WANT YOU TO KNOW THAT YOUR -- YOUR  
25 FORMER COLLEAGUE HERE, THEY LIVE THIS STUFF EVERY

0414

1 DAY. I DON'T. I GOT PLENTY OF CASES.

2 SO THAT'S WHY I JUST WANT TO MAKE  
3 SURE I COVER THIS. SO IF IT SOUNDS -- DON'T  
4 ASSUME I KNOW THE ANSWER BECAUSE I DON'T.

5 A. NO PROBLEM.

6 Q. ALL RIGHT. I'M JUST -- I'M JUST  
7 LETTING YOU KNOW. I'M NOT TRYING TO BADGER YOU  
8 ABOUT IT.

9 NOW, WAS THERE EVER A CLAIM FROM --  
10 DO YOU KNOW IF THERE'S A DISPUTE OVER SOME OF  
11 THESE AIRPLANES THAT DIAMANTE AIR OWNED AND THEN  
12 LOST, IF THERE'S ANY CLAIM FOR DAMAGES AS A RESULT  
13 OF THOSE?

14 A. I DON'T KNOW.

15 Q. DO YOU -- WHAT TRIPS DID YOU TAKE  
16 THAT YOU'RE AWARE OF WITH THE INTENTION OF  
17 ACQUIRING ADDITIONAL LAND OR PROJECTS FROM 2003 TO  
18 2007 THAT WEREN'T RELATED TO THE CABO PROJECTS?

19 A. ALL TRIPS.

20 MR. RICHARDS: CAN YOU GUYS GET  
21 MR. JOWDY A PAPER TOWEL, PLEASE?

22 NO, NO. YOU DON'T NEED TO USE YOUR  
23 HAND. JUST AS -- YOU'RE ANSWERING ALL THE

24 QUESTIONS. YOU JUST HAVE A DRY MOUTH.  
25 THE DEONENT: CAN I HAVE A BOTTLE  
0415  
1 OF WATER?  
2 MS. CROWTHER: YEAH.  
3 MR. RICHARDS: YEAH. I WANT YOU TO  
4 BE COMFORTABLE, BECAUSE, REALLY --  
5 THE DEONENT: OKAY. NO PROBLEM.  
6 MR. RICHARDS: -- YOU'RE DEALING  
7 WITH TWO PROFESSIONAL ATTORNEYS. WE JUST WANT  
8 TO -- WE JUST WANT TO GET THROUGH THE DAY.  
9 THE DEONENT: THANKS.  
10 MR. RICHARDS: AND IF YOU SEE  
11 SOMEONE ON MY SIDE HAVING A FROTHING ISSUE, ROBYN,  
12 PLEASE ALERT ME.  
13 MS. CROWTHER: OBJECTION TO THE USE  
14 OF THE TERM "FROTHING."  
15 MR. RICHARDS: I'M KIDDING. IT WAS  
16 A JOKE. THE RECORD WILL REFLECT IT WAS LEVITY.  
17 THE DEONENT: THE QUESTION IS IF I  
18 TOOK ANY TRIPS TO SEE ANY PROPERTIES?  
19 BY MR. RICHARDS:  
20 Q. YEAH. THAT WEREN'T RELATED TO THE  
21 CABO PROJECT.  
22 A. JUST PROPERTIES YOU WANT TO KNOW  
23 ABOUT?  
24 Q. PROPERTIES OR PROJECTS.  
25 MS. CROWTHER: HE JUST WANTS TO  
0416  
1 KNOW IF YOU TOOK ANY TRIPS BETWEEN 2003 AND 2007.  
2 THE DEONENT: OKAY. YES.  
3 BY MR. RICHARDS:  
4 Q. WHAT WERE THOSE THAT YOU REMEMBER?  
5 A. I REMEMBER A TRIP TO COSTA RICA. I  
6 REMEMBER A TRIP TO TEXAS. A TRIP TO TENNESSEE.  
7 I'M SURE I LOOKED AT PROPERTY IN  
8 AND AROUND SOMEWHERE IN BAJA CALIFORNIA.  
9 NOT -- THIS IS -- THIS IS STUFF  
10 EITHER TO POSSIBLY PURCHASE OR JUST TO GET A  
11 PERSPECTIVE AS TO WHAT WE HAVE; CORRECT?  
12 Q. YEAH.  
13 A. NOT ALWAYS JUST TO PURCHASE. JUST  
14 TO KIND OF UNDERSTAND OTHER PROPERTIES.  
15 Q. CORRECT.  
16 A. OKAY.  
17 Q. AND DID YOU FLY ON THE FALCON OR  
18 OTHER DIAMANTE AIRPLANES WHEN YOU DID THESE  
19 VISITS?  
20 A. FOR SOME OF THEM I DID, YES.  
21 Q. AND WHO PAID FOR THESE TRIPS?



22 A. IT DEPENDS WHAT -- IF IT WAS  
23 OUTSIDE OF WHAT THIS WAS, THEN EITHER -- MOSTLY  
24 LEGACY PROPERTIES, IF I TOOK THE FALCON AND IT WAS  
25 OUTSIDE OF THE SCOPE OF WHAT THIS BUSINESS IS.

0417

1 Q. AND WERE YOU GOING TO HAVE THE  
2 ORIGINAL DIAMANTE MEMBERS AS PARTNERS EVER IN ANY  
3 OF THESE OTHER NON-CABO PROPERTIES?

4 MS. CROWTHER: OBJECTION. I DON'T  
5 THINK THERE WERE ANY PARTNERS.  
6 BY MR. RICHARDS:

7 Q. WELL, JUST THE ORIGINAL DIAMANTE  
8 MEMBERS, WERE YOU GOING TO INVOLVE THEM, GIVE  
9 THEM, LIKE, A RIGHT OF FIRST REFUSAL IN THESE  
10 OTHER PROPERTIES?

11 A. WELL, I'M -- I KNOW I TALKED TO  
12 MR. KENNER ABOUT A TRIP TO COSTA RICA. I THINK I  
13 EVEN ASKED HIM IF HE WANTED TO GO. HE SAID HE  
14 DIDN'T.

15 AND WHEN THE BOOT RANCH DEAL CAME  
16 UP, I THINK I OFFERED 20 PERCENT TO MR. KENNER OF  
17 THAT DEAL.

18 Q. WHAT WAS THE PLAN WITH QUERENCIA IN  
19 CABO?

20 A. QUERENCIA?

21 Q. QUERENCIA, YEAH.

22 A. WE LOOKED AT PROPERTY ALL OVER  
23 CABO, SO THAT WAS ONE OF THE PLACES THAT WE LOOKED  
24 AT.

25 Q. DO YOU KNOW WHY YOU DIDN'T PURCHASE

0418

1 IT?

2 A. THERE WERE, I THINK, A FEW REASONS.  
3 AND ONE WAS I DON'T THINK WE CAN PUT IT TOGETHER  
4 IN TIME.

5 AND THE MEMBERS HAD A GROUP  
6 TOGETHER THAT WANTED TO PURCHASE IT, AND THEN THEY  
7 KIND OF WENT TO ANOTHER GUY THAT WAS, I THINK,  
8 FRIENDLY TO -- WITH THE BROKERS OF THE DEAL.

9 Q. WHAT WAS THE PLAN WITH THE TWIN  
10 DOLPHIN SITE IN CABO?

11 A. AGAIN, IT'S ANOTHER PROPERTY THAT  
12 WE LOOKED AT.

13 Q. AND DO YOU KNOW WHY THAT WASN'T  
14 PURCHASED?

15 A. I DON'T.

16 Q. IN 2005/2006, DO YOU REMEMBER  
17 TAKING A TEN-DAY TRIP TO ACAPULCO?

18 A. NO.

19 Q. DID YOU EVER REMEMBER GOING TO

20 ACAPULCO?

21 A. YES.

22 Q. AND WHEN DID YOU GO TO ACAPULCO?

23 A. I'M NOT SURE.

24 Q. DID YOU USE THE FALCON 10 TO VISIT  
25 THE AIRPORT IN ACAPULCO?

0419

1 A. I MAY HAVE.

2 Q. WHO OWNED THE AIRPORT IN ACAPULCO?

3 A. I DON'T RECALL.

4 Q. DO YOU REMEMBER WHAT THE PURPOSE OF  
5 THE TRIP WAS?

6 A. I DON'T RECALL.

7 Q. AND WHO PAID FOR THE FLIGHTS?

8 A. I DON'T RECALL.

9 Q. DO YOU KNOW WHO PAID FOR THE  
10 EXPENSES?

11 A. I DON'T KNOW.

12 Q. WHEN WAS LEGACY PROPERTIES CREATED?

13 A. I'M NOT SURE.

14 Q. WASN'T IT AFTER THE ACAPULCO TRIP?

15 A. I DON'T KNOW.

16 Q. WHEN YOU WENT TO THE COSTA RICA  
17 TRIP, DID YOU FLY IN THE FALCON 10?

18 A. I BELIEVE SO.

19 Q. DO YOU KNOW WHO PAID FOR THAT  
20 FLIGHT?

21 A. I DON'T KNOW.

22 Q. WHAT ABOUT THE EXPENSES?

23 A. I DON'T RECALL.

24 Q. DO YOU KNOW ABOUT THE BLACK -- THE  
25 BLACK BART?

0420

1 A. I DON'T KNOW WHAT THAT IS.

2 Q. WERE YOU -- WERE YOU TRYING TO  
3 FACILITATE A HARD MONEY LOAN FROM A GENTLEMAN  
4 REFERRED TO AS "BLACK BART"?

5 A. I DON'T BELIEVE I KNOW WHO THAT IS.

6 Q. DO YOU KNOW WHO GIGI FERNANDEZ IS?

7 A. GIGI FERNANDEZ. CAN YOU GIVE ME  
8 SOME REFERENCE?

9 Q. SHE WAS A -- NO. BECAUSE IF YOU  
10 DON'T KNOW WHO SHE IS, I CAN TRY LATER. I'LL TRY  
11 TO GET SOME --

12 A. I KNOW OF ONE GIRL NAMED GIGI. SHE  
13 LIVES IN MEXICO. SHE'S A FRIEND OF BOB GAUDET'S.  
14 I DON'T KNOW.

15 Q. YEAH. THAT'S THE RIGHT PERSON.

16 A. I DON'T KNOW.

17 Q. DID SHE -- DO YOU KNOW IF

18 TOM HARVEY TRIED TO COMMUNICATE WITH GIGI ABOUT  
19 TWO CRIMINAL CASES IN MEXICO?

20 A. I DON'T KNOW.

21 Q. IS -- ARE YOU AWARE THAT  
22 FERNANDO GARCIA APPROACHED GIGI IN PERSON IN CABO  
23 SAN LUCAS TO DISCUSS HER INVOLVEMENT?

24 A. I KNOW THAT HE SAW HER BECAUSE I  
25 WAS WITH HER WHEN HE SAW HER. BUT I DON'T KNOW

0421

1 WHAT THEY DISCUSSED.

2 Q. ARE YOU AWARE THAT -- THAT GARCIA  
3 THREATENED HER, THAT IF SHE REMAINED INVOLVED IN  
4 THE CASES IN MEXICO, THAT SHE'D BE SUBJECT TO  
5 CRIMINAL PROSECUTION?

6 A. I DON'T KNOW IF HE SAID THAT OR  
7 NOT. I DON'T KNOW IF THAT'S A THREAT OR NOT.

8 Q. I DON'T KNOW. I'M JUST ASKING IF  
9 YOU'RE AWARE HE SAID IT.

10 A. I DON'T KNOW IF HE SAID THAT.

11 Q. ARE YOU AWARE THAT TOM HARVEY SENT  
12 THREATENING E-MAILS TO PHIL KENNER?

13 A. NO.

14 Q. ARE YOU AWARE THAT HE SENT THEM TO  
15 ONE OF KENNER'S -- AN ATTORNEY IN IDAHO NAMED  
16 PAUL AUGUSTINE?

17 MS. CROWTHER: OBJECTION. THIS IS  
18 A CASE THAT'S BEEN DISMISSED.

19 MR. RICHARDS: I KNOW. I'M JUST  
20 ASKING HIM IF HE'S AWARE OF IT.

21 MS. CROWTHER: BUT YOU'RE CALLING  
22 THEM THREATENING E-MAILS, AND THEY'RE NOT.

23 MR. RICHARDS: NO. THEY --

24 MS. CROWTHER: THAT'S SETTLEMENT  
25 COMMUNICATIONS, AND THAT'S WHY THE JUDGE DISMISSED

0422

1 THE CASE.

2 BY MR. RICHARDS:

3 Q. OKAY. I'LL JUST SAY: ARE YOU --  
4 ARE YOU -- ARE YOU AWARE THAT E-MAILS WERE SENT  
5 TO -- WELL, THEY WERE DISMISSED ON CONSTITUTIONAL  
6 GROUNDS. WE CAN GET INTO THAT DISCUSSION LATER.

7 THE -- THEY -- THEY -- BECAUSE I  
8 GUESS TOM HARVEY PRACTICES OUT HERE NOW.

9 ARE YOU -- ARE YOU -- ARE YOU AWARE  
10 THAT TOM HARVEY SENT AN E-MAIL TO PAUL AUGUSTINE  
11 RELATED TO TRYING TO SETTLE THIS CASE WITH YOU FOR  
12 YOU?

13 A. I'M AWARE HE -- I AM AWARE HE SENT  
14 E-MAILS TO PAUL AUGUSTINE, YES.

15 Q. DID YOU APPROVE THEM BEFORE HE SENT

16 THEM?

17 MS. CROWTHER: OBJECTION. DON'T  
18 ANSWER. ATTORNEY-CLIENT COMMUNICATIONS AND WORK  
19 PRODUCT.

20 COME ON.

21 BY MR. RICHARDS:

22 Q. WHY DOES JOWDY -- WHY DID -- WHY  
23 DID YOU -- WHY DO YOU THINK THAT IF PHIL KENNER  
24 RELINQUISHES HIS INTEREST IN DIAMANTE DEL MAR, IN  
25 THE DIAMANTE CABO SAN LUCAS, THAT THE MEDIA WILL

0423

1 LEAVE KENNER ALONE?

2 A. WHY ARE YOU SAYING I -- I DON'T --  
3 ARE YOU ASKING --

4 Q. THESE WERE IN E-MAILS. I JUST WAS  
5 WONDERING -- DID YOU EVER READ THE E-MAILS?

6 A. THAT I WROTE?

7 Q. NO.

8 MS. CROWTHER: OBJECTION.

9 BY MR. RICHARDS:

10 Q. NO. THAT TOM HARVEY WROTE.  
11 (WHEREUPON, A DISCUSSION WAS HELD  
12 OFF THE RECORD.)

13 BY MR. RICHARDS:

14 Q. DID YOU EVER READ THE E-MAILS?

15 MS. CROWTHER: AND LET ME JUST  
16 OBJECT. TO THE EXTENT THAT YOU READ THEM AT THE  
17 DIRECTION OF COUNSEL OR IN COMMUNICATION WITH  
18 COUNSEL, YOU SHOULD NOT DISCLOSE THAT.

19 IF YOU READ THEM SOME OTHER TIME,  
20 THEN THAT'S FINE.

21 THE DEPONENT: I CAN'T DISCLOSE.

22 BY MR. RICHARDS:

23 Q. ALL RIGHT. WHO -- WHO OWNS THE  
24 JOWDY INTEREST IN THE C.S.L. AIRPORT?

25 A. THERE IS NO JOWDY INTEREST IN THE

0424

1 C.S.L. AIRPORT NOW.

2 Q. SO NONE OF YOUR COMPANIES OWN ANY  
3 PORTION OF THAT AIRPORT?

4 A. NO.

5 Q. ALL RIGHT. IS THERE A LAWSUIT  
6 RIGHT NOW WITH YOU AND THE CURRENT AIRPORT  
7 MANAGEMENT?

8 A. THERE'S LITIGATION, YES.

9 Q. AND WHAT -- WHO'S THE PARTIES OF  
10 THAT LITIGATION, TO THE BEST OF YOUR KNOWLEDGE?

11 A. I DON'T KNOW.

12 Q. AND HOW DO YOU KNOW THERE'S  
13 LITIGATION?

14 A. I BELIEVE THERE IS.

15 Q. BASED ON WHAT?

16 A. BASED ON COMMUNICATIONS WITH MY  
17 ATTORNEY.

18 Q. ALL RIGHT. DIAMANTE AIR --  
19 YESTERDAY YOU TESTIFIED THAT YOU AND PHIL KENNER  
20 WERE THE MANAGING MEMBERS AT -- IT WAS UNCLEAR AS  
21 TO WHO WAS MANAGING MEMBER WHEN.

22 BUT WEREN'T YOU -- WEREN'T -- DON'T  
23 THE CORPORATE RECORDS SHOW THAT YOU AND THALMANN  
24 ARE THE MANAGING MEMBERS?

25 A. I DON'T BELIEVE SO.

0425

1 Q. WHO CONTROLLED THE DAY-TO-DAY  
2 DECISIONS OF DIAMANTE AIR?

3 MS. CROWTHER: OBJECTION. VAGUE AS  
4 TO TIME.

5 BY MR. RICHARDS:

6 Q. DURING THE TIME -- AT ANY -- DURING  
7 THE TIME PERIOD UNTIL YOU RELINQUISHED CONTROL --  
8 UNTIL DIAMANTE RELINQUISHED CONTROL OF ALL OF  
9 THEIR PLANES, PRIOR TO THAT TIME?

10 A. I DON'T KNOW.

11 Q. WASN'T MR. THALMANN IN CONTROL OF  
12 DAY-TO-DAY OPERATIONS?

13 A. I DON'T BELIEVE SO.

14 Q. WHO MANAGED THE BANK ACCOUNTS FOR  
15 THE COMPANY?

16 A. MARK THALMANN.

17 Q. WHAT BANK WERE THE ACCOUNTS AT?

18 A. I DON'T REMEMBER.

19 Q. ARE THERE ANY FUNDS IN THE ACCOUNTS  
20 NOW?

21 A. I DON'T KNOW.

22 Q. HAS THE COMPANY CLOSED?

23 A. I DON'T KNOW.

24 Q. DO YOU KNOW WHO SIGNED FOR THE LOAN  
25 ON THE FALCON?

0426

1 A. I DON'T KNOW.

2 Q. DO YOU KNOW WHY THE LOAN WAS NEVER  
3 PAID DOWN DURING THE YEARS THAT YOU USED IT?

4 A. I DON'T BELIEVE THAT TO BE TRUE.

5 Q. DO YOU BELIEVE IT WAS PAID DOWN?

6 A. DEFINE "PAID DOWN."

7 Q. YOU KNOW, THE PRINCIPAL LOWERED.

8 A. YES, IT WAS.

9 Q. IT WAS?

10 A. I BELIEVE SO.

11 Q. ALL RIGHT. AND JUST SO WE'RE

12 CLEAR, DID YOU DIRECT TOM HARVEY TO SPEAK WITH  
13 RICK ROSENBOOM AT 1ST SOURCE BANK TO TRY TO BUY  
14 THE PLANE?

15 MS. CROWTHER: OBJECTION.

16 ATTORNEY-CLIENT COMMUNICATIONS.

17 I INSTRUCT YOU NOT TO ANSWER.

18 BY MR. RICHARDS:

19 Q. DID YOU HAVE ANYBODY TRY TO BUY THE  
20 BANK FROM 1ST SOURCE BANK?

21 MS. CROWTHER: OBJECTION. IF THAT  
22 INVOLVES A COMMUNICATION TO AN ATTORNEY, YOU  
23 SHOULD NOT DISCLOSE IT. BUT IF THERE ARE  
24 COMMUNICATIONS WITH NONATTORNEYS, YOU MAY.

25 THE DEPONENT: NO, I DON'T BELIEVE

0427

1 SO.

2 BY MR. RICHARDS:

3 Q. DID YOU TRY TO HIRE A C.E.O. OF  
4 DIAMANTE DEL MAR NAMED HOMI, H-O-M-I?

5 A. I DON'T UNDERSTAND THE QUESTION.

6 Q. HAVE YOU EVER TRIED TO HIRE A  
7 C.E.O. FOR DIAMANTE DEL MAR OTHER THAN YOURSELF?

8 A. NO.

9 Q. DIRECTING YOUR ATTENTION TO THE  
10 QUESTIONS ON THE TEXAS BOOT RANCH.

11 WHY DID YOU PURSUE THAT PROJECT?

12 MS. CROWTHER: OBJECTION. IT'S  
13 BEYOND THE SCOPE OF THE COMPLAINT. IT'S NOT  
14 RELEVANT.

15 AND I INSTRUCT YOU NOT TO ANSWER.

16 MR. RICHARDS: YOU KNOW, IT IS  
17 RELEVANT BECAUSE HE'S TESTIFIED TO IT. IT'S ALL  
18 OVER THE DOCUMENTS YOU PROVIDED US.

19 MS. CROWTHER: JUST BECAUSE THERE  
20 ARE DOCUMENTS THAT MIGHT MENTION IT DOESN'T MEAN  
21 THAT IT'S RELEVANT. AND I'M NOT GOING TO LET YOU  
22 ASK HIM QUESTIONS ABOUT IT.

23 MR. RICHARDS: YOU KNOW, IT'S  
24 SUPPOSED TO LEAD TO THE DISCOVERY OF ADMISSIBLE  
25 EVIDENCE.

0428

1 MS. CROWTHER: IT WON'T.

2 MR. RICHARDS: WELL, HOW DO YOU  
3 KNOW?

4 MS. CROWTHER: BECAUSE I KNOW. IT  
5 DOESN'T HAVE ANYTHING TO DO WITH ANY OF THE  
6 PLAINTIFFS IN THE COMPLAINT. IT DOESN'T HAVE  
7 ANYTHING TO DO WITH THE MEXICAN PROJECTS.

8 MR. RICHARDS: I KNOW. BUT WE'RE  
9 ALLEGING THAT HIS INTERESTS WERE DIVERTED. AND I

10 JUST WANT TO KNOW WHY HE WENT TO PURCHASE -- WHY  
11 DID HE PURSUE THE PROJECT. IT'S A SIMPLE  
12 QUESTION.

13 MS. CROWTHER: IT IS A SIMPLE  
14 QUESTION. IT'S ALSO IRRELEVANT.

15 YOU CAN ASK HIM ABOUT HIS TIME AND  
16 WHAT HE SPENT HIS TIME DOING, AND HE'S TESTIFIED  
17 TO THAT. SO THAT'S ASKED AND ANSWERED.

18 BY MR. RICHARDS:

19 Q. DID YOU -- WELL, HOW MUCH DID YOU  
20 INVEST IN THAT PROJECT?

21 MS. CROWTHER: OBJECTION. I  
22 INSTRUCT YOU NOT TO ANSWER.

23 MR. RICHARDS: WE'RE TRYING --  
24 WE'RE TRYING TO RECOVER FUNDS. WE'RE ENTITLED TO  
25 KNOW IF HE INVESTED ANY MONEY IN IT.

0429

1 MS. CROWTHER: NO, YOU'RE NOT.

2 MR. RICHARDS: IF IT'S -- IF IT  
3 CAME FROM THE ENTITIES THAT MY CLIENTS HAVE  
4 OWNERSHIP INTEREST, IT IS.

5 MS. CROWTHER: YOU CAN ASK HIM THAT  
6 QUESTION.

7 MR. RICHARDS: OKAY.

8 BY MR. RICHARDS:

9 Q. DID YOU -- DID ANY OF THE MONEYS  
10 INVESTED IN THE TEXAS BOOT RANCH PROJECT COME FROM  
11 ANY OF THE ENTITIES THAT HAVE BEEN TESTIFIED TO IN  
12 THIS LITIGATION?

13 MS. CROWTHER: OBJECTION. THAT'S  
14 NOT WHAT I SAID HE COULD ANSWER.

15 HE CAN ANSWER WHETHER ANY OF THE  
16 ENTITIES IN WHICH THE PLAINTIFFS HAVE INTEREST  
17 SENT MONEY TO THAT PROJECT.

18 MR. RICHARDS: WELL, THE  
19 PLAINTIFFS -- WELL, NO, BECAUSE HE -- THAT MONEY  
20 HAS BEEN DIVERTED TO OTHER ENTITIES IN THIS CASE,  
21 SO THAT -- THAT WOULD BE TOO LIMITING.

22 MS. CROWTHER: NO, IT'S NOT.

23 MR. RICHARDS: WELL, ANY OF THE  
24 ENTITIES THAT ARE INVOLVED IN MEXICO WOULD BE THE  
25 ACCURATE QUESTION.

0430

1 MS. CROWTHER: NO, IT'S NOT.

2 YOUR CLIENTS HAVE INTEREST IN  
3 PARTICULAR ENTITIES, AND YOU CAN ASK ABOUT WHERE  
4 THAT MONEY WENT. YOU CAN'T ASK ABOUT WHERE OTHER  
5 ENTITIES SENT THEIR MONEY.

6 MR. RICHARDS: BUT HE NEVER  
7 PROVIDED A TRACING OF WHERE THE MONEY WENT.

8 MS. CROWTHER: YOU CAN ASK HIM  
9 ABOUT WHERE THE MONEY WENT FROM THE ENTITIES IN  
10 WHICH THOSE PEOPLE HAVE INTEREST.

11 MR. RICHARDS: BUT THAT MONEY WAS  
12 THEN TRANSFERRED INTO OTHER ENTITIES.

13 MS. CROWTHER: WELL, YOU CAN ASK  
14 HIM IF THAT HAPPENED. YOU HAVEN'T LAID ANY  
15 FOUNDATION THAT THAT HAPPENED.

16 BY MR. RICHARDS:

17 Q. WELL, WHEN -- WHEN YOU -- WHEN YOU  
18 TOOK DRAWS FROM LEHMAN BROTHERS OVER THE COURSE OF  
19 THE LOAN, WHAT ENTITY DID YOU DEPOSIT THE FUNDS  
20 IN?

21 A. WHICH LOAN?

22 Q. THE CABO SAN LUCAS LOAN.

23 A. DIAMANTE CABO SAN LUCAS.

24 Q. AND DIAMANTE CABO SAN LUCAS PAID  
25 FEES TO LEGACY PROPERTIES; CORRECT?

0431

1 A. I BELIEVE SO.

2 Q. OKAY. AND THEY PAID FEES TO BAJA  
3 DEVELOPMENT?

4 A. NO.

5 Q. ONLY LEGACY PROPERTIES?

6 A. I DON'T KNOW IF IT'S ONLY LEGACY  
7 PROPERTIES, BUT NOT BAJA DEVELOPMENT.

8 Q. OKAY. CAN YOU JUST TELL ME WHAT  
9 OTHER ENTITIES THAT YOU OWN OR CONTROL RECEIVE  
10 PROCEEDS FROM THE LOAN DRAWS FROM LEHMANS BESIDES  
11 CABO SAN LUCAS?

12 A. INITIALLY, THE EMPLOYEES WERE IN  
13 DIAMANTE MANAGEMENT, SO THAT WOULD GET MONEY FROM  
14 DIAMANTE CABO SAN LUCAS TO PAY THE EMPLOYEES. WE  
15 DON'T USE DIAMANTE MANAGEMENT ANYMORE.

16 Q. DID LEGACY PROPERTIES INVEST IN  
17 TEXAS BOOT RANCH?

18 MS. CROWTHER: OBJECTION.  
19 IRRELEVANT. EXCEEDS THE SCOPE OF THE COMPLAINT.  
20 INSTRUCT YOU NOT TO ANSWER.

21 MR. RICHARDS: BUT HE SAID THEY GOT  
22 MONEY FROM THE LOAN --

23 MS. CROWTHER: SO WHAT. YOU DON'T  
24 NEED TO KNOW WHAT HE DID WITH IT.

25 YOU CAN ARGUE THAT IT WAS IMPROPER

0432

1 FOR THEM TO GET THE MONEY, BUT YOU DON'T GET TO  
2 KNOW WHAT THEY DID WITH IT. IT'S NOT RELEVANT.

3 MR. RICHARDS: WELL, IT'S RELEVANT  
4 IF IT'S CONCEALED.

5 MS. CROWTHER: NO, IT'S NOT.



6 IF IT PAID IT TO LEGACY PROPERTIES  
7 AS A DEVELOPMENT FEE, YOU CAN ARGUE THAT'S  
8 IMPROPER. THAT'S IT.

9 YOU DON'T GET AN ACCOUNTING OF  
10 EVERY PLACE THAT THE MONEY WENT BEYOND THAT. YOU  
11 GET TO KNOW WHAT THOSE ENTITIES DID WITH THE  
12 MONEY. THAT'S IT.

13 MR. RICHARDS: HE'S DEPRIVING THE  
14 OTHER -- THE OTHER INDIVIDUALS OF CORPORATE  
15 OPPORTUNITY.

16 MS. CROWTHER: NO, HE'S NOT.  
17 AND THAT'S A LEGAL ARGUMENT. YOU  
18 WANT TO MAKE THAT ARGUMENT TO THE JUDGE AND ARGUE  
19 YOU GET TO GO GET ASSETS FROM SOMEONE ELSE?  
20 THAT'S SO FAR DOWN THE ROAD. THAT'S NOT WHAT THIS  
21 DISCOVERY IS ABOUT.

22 MR. RICHARDS: WELL, HE'S SUED FOR  
23 AN ACCOUNTING. IF MONEY WAS DIVERTED TO LEGACY  
24 PROPERTIES IN THE FORM OF A DEVELOPMENT FEE, THEN  
25 I'D BE ENTITLED TO KNOW WHAT HE DID WITH THE MONEY

0433

1 IN THE TEXAS PROJECT.

2 MS. CROWTHER: NO. YOU GET TO KNOW  
3 THAT LEGACY GOT A DEVELOPMENT FEE. AFTER THAT  
4 IT'S NOT RELEVANT. THOSE PLAINTIFFS DON'T HAVE AN  
5 INTEREST IN LEGACY.

6 YOU CAN ARGUE THAT IT WAS  
7 INAPPROPRIATE. THAT'S THE END OF THE ARGUMENT.

8 MR. RICHARDS: WELL, YOU'RE JUST --  
9 YOU KNOW, YOU'RE -- THESE ARE -- THESE ARE  
10 QUESTIONS THAT PROBABLY ARE SIMPLE ANSWERS.  
11 YOU'RE JUST INVITING MORE MOTIONS ON THIS.

12 MS. CROWTHER: MORE MOTIONS THAT  
13 YOU'LL LOSE.

14 I'M NOT GOING TO LET YOU DO A  
15 FISHING EXPEDITION TO EVERYTHING KEN JOWDY'S EVER  
16 SPENT MONEY ON. IT'S JUST A WASTE OF TIME.

17 MR. RICHARDS: WELL, IF IT'S -- IF  
18 IT'S MONEY THAT HE -- IF IT'S MONEY THAT WAS  
19 RECEIVED FROM THE -- FROM THIS PARTICULAR PROPERTY  
20 THAT MY CLIENTS OWN, THAT -- IT'S -- THAT EQUITY  
21 WAS ENCUMBERED.

22 AND THAT'S WHY WE'RE TRYING TO GET  
23 THAT -- I DON'T -- ARE WE ON THE SAME PAGE HERE?

24 HE GOT A -- HE GOT A CREDIT LINE.  
25 THEY DIDN'T GIVE HIM ALL THE MONEY AT ONCE. SO

0434

1 HE -- THE CREDIT LINE WAS SECURED BY THE PROPERTY  
2 THAT MY CLIENTS OWN.

3 MS. CROWTHER: FIRST OF ALL, HE

4 DIDN'T GET A CREDIT LINE. DIAMANTE CABO SAN LUCAS  
5 DID.

6 AND SECOND OF ALL, IT MADE  
7 PAYMENTS. AND THAT'S WHAT THIS LITIGATION IS  
8 ABOUT.

9 BUT US DEBATING THIS IS JUST  
10 WASTING MORE TIME. I'M NOT GOING TO LET YOU ASK  
11 QUESTIONS ABOUT WHAT LEGACY PROPERTIES SPENT MONEY  
12 ON.

13 MR. RICHARDS: WELL, I WAS MERELY  
14 JUST ATTEMPTING TO MEET AND CONFER OR MAKE A  
15 RECORD OF THIS SO IT WOULDN'T BE IN A TOTAL VACUUM  
16 IF I HAVE TO SHOW THE COURT. THAT'S ALL.

17 IT WASN'T -- AND WHEN YOU SAY IT'S  
18 A WASTE OF TIME, IT REALLY ISN'T. ONLY TO THE  
19 EXTENT THAT IT'S A BROAD STANDARD IN A DEPOSITION.

20 IT'S ANYTHING THAT CAN LEAD ME TO  
21 THE DISCOVERY OF ADMISSIBLE EVIDENCE, AS YOU KNOW,  
22 AND IT'S NOT A VERY NARROW STANDARD. AND I'M JUST  
23 TRYING TO FOLLOW WHERE THIS MONEY WAS SPENT.

24 MS. CROWTHER: AND I THINK WHAT I'M  
25 SAYING IS I'VE MADE MY POSITION CLEAR ABOUT WHY I

0435  
1 DON'T THINK THAT'S RELEVANT, AND I DON'T WANT TO  
2 WASTE MORE OF YOUR TIME DEPOSING MR. JOWDY MAKING  
3 MY POSITION CLEAR.

4 MR. RICHARDS: ALL RIGHT.

5 BY MR. RICHARDS:

6 Q. DID ANY -- DID LEGACY PROPERTIES OR  
7 DID -- WAS -- DID YOU DIVERT ANY MONEY FROM  
8 DIAMANTE CABO SAN LUCAS TO INVEST IN THE LAUREL  
9 COVE DEVELOPMENT?

10 A. NO.

11 Q. DID YOU -- DID YOU -- DID YOU,  
12 ACTING ON BEHALF OF BAJA DEVELOPMENT CORP. OR  
13 DIAMANTE CABO SAN LUCAS OR LEGACY PROPERTIES,  
14 RECEIVE ANY MONEY FROM YOUR COUSIN, EDDIE ESSA?

15 MS. CROWTHER: OBJECTION AS TO  
16 LEGACY PROPERTIES.

17 THE DEPONENT: DID --

18 BY MR. RICHARDS:

19 Q. DID EDDIE ESSA GIVE YOU ANY  
20 MONEY -- YOU, AS A PERSON, HAND YOU ANY MONEY?

21 A. NO.

22 MS. CROWTHER: OBJECTION. NOT  
23 RELEVANT.

24 BY MR. RICHARDS:

25 Q. ISN'T IT TRUE THAT HE GAVE YOU OVER

0436  
1 A MILLION DOLLARS?

2 A. NO.  
3 Q. IS HE AN OWNER OF ANY OF THESE  
4 PROPERTIES IN CABO SAN LUCAS?  
5 A. NO.  
6 Q. SO WHAT'S YOUR RELATIONSHIP WITH  
7 EDDIE ESSA?  
8 A. HE'S MY COUSIN.  
9 Q. DO YOU HAVE A BUSINESS RELATIONSHIP  
10 WITH HIM?  
11 A. NOT RIGHT NOW, NO.  
12 Q. NO. AT THE TIME.  
13 MS. CROWTHER: OBJECTION. IT'S NOW  
14 NOT RELEVANT BECAUSE HE'S GOT NO INTEREST IN THESE  
15 PROPERTY, SO HIS RELATIONSHIP WITH LOTS OF PEOPLE  
16 IS NOT RELEVANT.  
17 THE DEPONENT: HE HAS AN INTEREST,  
18 I BELIEVE, IN BAJA MANAGEMENT.  
19 BY MR. RICHARDS:  
20 Q. OH, HE DOES. OKAY.  
21 SO WHAT'S -- HOW DID HE ACQUIRE  
22 INTEREST IN BAJA MANAGEMENT?  
23 A. HE MADE AN INVESTMENT, I BELIEVE.  
24 I DON'T KNOW WHAT IT WAS.  
25 Q. WAS IT A MILLION DOLLARS?  
0437  
1 A. NO.  
2 Q. HALF A MILLION DOLLARS?  
3 A. NO.  
4 Q. WHAT -- WHAT COMPANY DID THE  
5 3 MILLION DOLLAR LOAN PROCEEDS FROM K.S.I. GET  
6 DEPOSITED IN?  
7 A. DIAMANTE -- DIAMANTE DEL MAR.  
8 SORRY.  
9 Q. AND WHAT WERE THOSE FUNDS USED FOR?  
10 A. TO PAY EXISTING EXPENSES.  
11 Q. AND HOW DID THAT LOAN BENEFIT THE  
12 PROJECT?  
13 A. WE HAD EXISTING EXPENSES THAT  
14 NEEDED TO BE PAID.  
15 Q. HAVE ANY OF THE -- HAVE ANY OF THE  
16 INVESTORS EVER BEEN NOTIFIED IN WRITING ABOUT THE  
17 3 MILLION DOLLAR LOAN OR THE STATUS?  
18 A. I DON'T KNOW.  
19 Q. HAS THE LOAN EVER BEEN PAID?  
20 A. NO.  
21 Q. FOR DIAMANTE CABO SAN LUCAS, WHO'S  
22 IN CHARGE OF THE BUDGETS? WHO CONTROLS THE  
23 BUDGETS, I MEAN.  
24 A. IT DEPENDS WHICH BUDGET YOU'RE  
25 TALKING ABOUT.

0438

1 Q. I GUESS THE BUDGET -- WELL, THE  
2 ONLY SOURCE OF MONEY IS THIS -- THE REMAINING  
3 CREDIT LINE THAT'S NOW OWNED BY DANSKE; RIGHT?  
4 (NO AUDIBLE RESPONSE BY DEPONENT.)  
5 BY MR. RICHARDS:  
6 Q. IS THAT A "YES"?  
7 (NO AUDIBLE RESPONSE BY DEPONENT.)  
8 BY MR. RICHARDS:  
9 Q. YOU'VE GOT TO JUST SAY "YES."  
10 A. YES.  
11 Q. SHE CAN'T TAKE DOWN "UH-HUHS."  
12 THE -- SO WHO SIGNS OFF ON THE  
13 BUDGET EVERY MONTH?  
14 A. THE BUDGET IS PUT TOGETHER BY A  
15 GROUP OF PEOPLE THAT, I GUESS AS THE MANAGING  
16 MEMBER, I HAVE TO SIGN OFF ON.  
17 Q. YESTERDAY YOU SAID IT WOULD BE EASY  
18 TO GET YOUR BUDGET REQUESTS E-MAILED OVER.  
19 DID YOU -- SINCE YESTERDAY, DID YOU  
20 EVER MAKE AN ATTEMPT TO DO THAT?  
21 A. I DID NOT.  
22 Q. OKAY. DID -- SO IT'S NOT THAT  
23 EASY, OR DID YOU NOT MAKE AN ATTEMPT?  
24 A. I NEED TO BE TOLD IF THAT'S WHAT I  
25 NEED TO DO.

0439

1 Q. I SEE.  
2 MR. RICHARDS: AND, ROBYN, YOU SAID  
3 YOU WOULD TRY TO DO IT, BUT YOU WERE UNABLE TO?  
4 MS. CROWTHER: NO, I DID NOT GET  
5 HOME IN TIME LAST NIGHT TO DO IT.  
6 MR. RICHARDS: NO PROBLEM.  
7 BY MR. RICHARDS:  
8 Q. WHO -- ARE YOU THE ONE, THOUGH,  
9 THAT SIGNS OFF ON THE REQUEST TO DANSKE BANK?  
10 A. I HAVE TO SAY, AS A MANAGING  
11 MEMBER, I'M RESPONSIBLE FOR IT.  
12 Q. OKAY. WHO'S FORREST METZ?  
13 A. I BELIEVE HE HAD A PROPERTY IN  
14 NORTHERN BAJA.  
15 Q. AND DID YOU FLY THE FALCON 10 TO  
16 THAT SITE?  
17 A. I BELIEVE SO.  
18 Q. AND WHO WAS GOING TO FUND THAT  
19 DEAL?  
20 A. I DON'T KNOW.  
21 Q. DID -- LET ME DIRECT YOUR ATTENTION  
22 TO BOB GAUDET.  
23 DID BOB GAUDET EVER LEND YOU

24 125,000 DOLLARS?

25 A. NO.

0440

1 Q. DID HE LEND YOU ANY MONEY AT ALL?

2 A. NO.

3 Q. DID BOB GAUDET EVER PERSONALLY PAY  
4 FOR DIAMANTE OR -- PAY DIAMANTE EXPENSES OR YOUR  
5 EXPENSES?

6 MS. CROWTHER: VAGUE AS TO THE TERM  
7 "DIAMANTE." WHICH ONE?

8 BY MR. RICHARDS:

9 Q. ANY OF THEM.

10 A. HE PAID SOME HOME EXPENSES, HOUSE  
11 EXPENSES, YES.

12 Q. DID YOU EVER ATTEMPT TO REPAY HIM?

13 A. NO.

14 Q. HOW COME?

15 A. BECAUSE HE WAS GIVEN AN INTEREST IN  
16 DIAMANTE CABO SAN LUCAS.

17 Q. WHO'S MARK PETERSON?

18 A. HE WORKED FOR THREE PALMS  
19 INTERNATIONAL.

20 Q. AND DID YOU TELL HIM TO HALT SALES  
21 IN 2007?

22 A. NO.

23 Q. AT ANY TIME?

24 A. NO.

25 Q. DO YOU KNOW WHO BRIAN MCNAMEE IS?

0441

1 A. YES.

2 Q. WHO'S THAT?

3 A. HE'S A TRAINER.

4 Q. AND WHO DID HE TRAIN OTHER THAN  
5 ROGER CLEMENS AND YOU?

6 MS. CROWTHER: OBJECTION. NOT  
7 RELEVANT. LACKS FOUNDATION.

8 THE DEONENT: I DON'T KNOW.

9 BY MR. RICHARDS:

10 Q. DID HE TRAIN YOU?

11 A. I WORKED OUT WITH HIM, YES.

12 Q. AND DID HE TRAIN ROGER CLEMENS?

13 A. YES.

14 Q. AND DID YOU EVER ASSIST HIM IN  
15 PROVIDING ANY TYPE OF DRUGS TO ROGER CLEMENS?

16 MS. CROWTHER: OBJECTION. NOT  
17 RELEVANT.

18 DON'T ANSWER THAT QUESTION.

19 MR. RICHARDS: ARE YOU HAVING HIM  
20 ASSERT THE FIFTH?

21 MS. CROWTHER: NO.

22 HOW IS THAT RELEVANT?  
23 THE DEPONENT: I'LL BE HAPPY TO  
24 ANSWER.  
25 NO.

0442

1 BY MR. RICHARDS:  
2 Q. OKAY. AND ARE YOU AWARE OF AN  
3 E-MAIL THAT ROGER CLEMENS' SISTER SENT TO YOU  
4 ABOUT RUINING THE CLEMENS FAMILY?  
5 MS. CROWTHER: OBJECTION. NOT  
6 RELEVANT.  
7 THE DEPONENT: SHE SENT TO WHO? TO  
8 ME?

9 BY MR. RICHARDS:  
10 Q. YES.  
11 A. YES.  
12 Q. AND WHAT WAS THE E-MAIL?  
13 MS. CROWTHER: AGAIN, OBJECTION.  
14 I REALIZE YOU DON'T HAVE ANY  
15 PROBLEM TALKING ABOUT THIS STUFF, BUT I DON'T WANT  
16 YOU TO SPEND YOUR DAY TALKING ABOUT THIS.  
17 IT'S NOT RELEVANT TO THIS  
18 LITIGATION, UNLESS IT HAS SOMETHING TO DO WITH  
19 THIS LITIGATION. IF IT DOES, YOU CAN TALK ABOUT  
20 IT. IF IT DOES NOT, I INSTRUCT YOU NOT TO ANSWER.  
21 MR. RICHARDS: WELL, RELEVANCY IS  
22 AN IMPROPER OBJECTION IN A DEPOSITION. IT REALLY  
23 IS.

24 MS. CROWTHER: IT'S TOTALLY  
25 IMPROPER WHEN YOU ARE SO FAR AFIELD OF ANYTHING.

0443

1 MR. RICHARDS: WELL, IF I HAVE AN  
2 E-MAIL THAT -- THAT SAYS THAT HE'S RUINING THE  
3 CLEMENS FAMILY, IT'S RELEVANT. HE'S THE DIRECTOR  
4 OF A GUY THAT IS -- THAT IS HOLDING ALL MY  
5 CLIENTS' MONEY.

6 MS. CROWTHER: YOU REPRESENT  
7 ROGER CLEMENS?

8 MR. RICHARDS: NO. I SAID IF I  
9 HAVE AN E-MAIL FROM HIS SISTER.

10 MS. CROWTHER: ABOUT WHAT?

11 MR. RICHARDS: HE KNOWS ABOUT THE  
12 E-MAIL. I'M ASKING HIM ABOUT IT.

13 MS. CROWTHER: HE KNOWS ABOUT A LOT  
14 OF THINGS. THAT DOESN'T MEAN THAT THEY ARE  
15 RELEVANT.

16 MR. RICHARDS: YOU'RE BEING AN  
17 OBSTRUCTIONIST. I'M JUST ASKING HIM ABOUT IT.

18 MS. CROWTHER: NO. YOU'RE GOING SO  
19 FAR -- I KNOW YOU'RE JUST ASKING, BUT A DEPOSITION

20 ISN'T A TIME TO SIT DOWN AND ASK ANY QUESTION YOU  
21 WANT TO ASK.

22 MR. RICHARDS: SURE IT IS.

23 MS. CROWTHER: NO, IT ISN'T.

24 MR. RICHARDS: SURE IT IS.

25 MS. CROWTHER: NO, IT ISN'T. IT

0444

1 HAS TO BE AT LEAST REASONABLY CALCULATED TO LEAD  
2 TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.

3 MR. RICHARDS: IF ROGER CLEMENS'  
4 SISTER IS SENDING HIM AN E-MAIL ABOUT RUINING THE  
5 CLEMENS FAMILY, I WANT TO KNOW WHAT SHE'S TALKING  
6 ABOUT.

7 MS. CROWTHER: I REALIZE YOU WANT  
8 TO KNOW. THAT DOESN'T MAKE IT RELEVANT.

9 MR. RICHARDS: IT COULD BE -- IT  
10 COULD LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE  
11 THAT RELATED TO HIS QUALIFICATIONS OR CAPACITY AS  
12 THE MANAGER.

13 THE DEPONENT: CAN I ANSWER THAT  
14 ONE QUESTION?

15 MS. CROWTHER: YES, YOU MAY ANSWER  
16 THE QUESTION ABOUT WHETHER IT HAS ANYTHING TO DO  
17 WITH YOUR QUALIFICATION --

18 MR. RICHARDS: WELL, YOU CAN'T  
19 COACH HIM. THAT WASN'T MY --

20 (SPEAKING SIMULTANEOUSLY.)

21 THE DEPONENT: I CAN ANSWER THE  
22 QUESTION. AND I DON'T -- I DON'T REALLY WANT TO  
23 GO FURTHER.

24 IF YOU WANT TO KNOW WHAT'S  
25 RELEVANT, THAT E-MAIL CAME THE DAY AFTER THE NEW

0445

1 YORK POST ARTICLE, AND IT'S GOING TO GO TOWARDS  
2 THE DAMAGES THAT YOU'VE CAUSED ME BECAUSE IT WAS  
3 BASED ON THE LIES THAT WERE IN THAT FIRST  
4 COMPLAINT THAT WAS IN THE NEW YORK POST ARTICLE.

5 SO THAT GOES TO THE DAMAGES THAT  
6 I'VE SUFFERED BECAUSE -- SHE SAYS THAT BECAUSE HER  
7 BROTHER WAS MENTIONED IN THAT ARTICLE, AND I WAS.  
8 BY MR. RICHARDS:

9 Q. OKAY. SO IS THAT --

10 MS. CROWTHER: IT WAS IRRELEVANT.

11 MR. RICHARDS: NOT REALLY. BECAUSE  
12 HE CLAIMS -- HE'S BEEN CLAIMING THAT THE  
13 LITIGATION HAS CAUSED HIM DAMAGES, AND THAT'S  
14 RELEVANT.

15 MS. CROWTHER: IT'S NOT YET.

16 WHEN WE FILE THAT LAWSUIT, IT WILL  
17 BE. IT'S NOT TODAY.

18 BY MR. RICHARDS:

19 Q. OKAY. NOW, WAS -- WAS MCNAMEE ON  
20 THE CABO PAYROLL?

21 A. NO.

22 Q. AND LEGACY PROPERTIES, IS THAT --  
23 THAT'S OWNED 100 PERCENT BY YOU?

24 A. YES.

25 Q. AND IS THERE A REASON WHY, ON THIS  
0446

1 VEGAS PROPERTY, THAT YOU'VE NOT TRANSFERRED TITLE  
2 TO PHIL KENNER?

3 A. THERE WAS AT THE TIME, I BELIEVE.  
4 I DON'T KNOW WHAT IT WAS. HE JUST DIDN'T WANT TO  
5 HAVE TITLE IN HIS NAME.

6 Q. WOULD YOU TRANSFER IT NOW?

7 A. IF HE WANTED TO HAVE A THIRD OF IT,  
8 YES.

9 Q. OKAY. WHO HAS THE DOCUMENTS  
10 RELATED TO THIS LOAN MODIFICATION THAT YOU  
11 TESTIFIED TO YESTERDAY?

12 MS. CROWTHER: THERE'S A BUNCH OF  
13 THEM. YOU MEAN THE CURRENT --

14 MR. RICHARDS: YEAH. THE CURRENT  
15 ONE.

16 MS. CROWTHER: -- FOR DANSKE BANK.

17 MR. RICHARDS: YEAH, THE CURRENT  
18 ONE.

19 THE DEPONENT: ATTORNEYS, I  
20 BELIEVE.

21 BY MR. RICHARDS:

22 Q. WHICH ATTORNEYS?

23 A. LARRY MARKOWITZ.

24 Q. AND DO YOU HAVE HIS PHONE NUMBER?

25 A. NO.

0447

1 Q. WHERE IS HE LOCATED?

2 A. NEW YORK.

3 Q. IS HE A NEW YORK-LICENSED ATTORNEY?

4 A. I HOPE SO.

5 Q. I MEAN, YOU MAKE ATTORNEYS HAPPY IN  
6 EVERY STATE OF THE COUNTRY.

7 A. UNFORTUNATELY.

8 MR. RICHARDS: ALL RIGHT. NOW --  
9 WELL, HE HAS A LOT. DELAWARE. NEW YORK.

10 MASSACHUSETTS. CALIFORNIA. IT'S TRUE.

11 BY MR. RICHARDS:

12 Q. OKAY. DO YOU -- DID YOU EVER  
13 GET -- DID YOU EVER NOTIFY ANY OF THE INVESTORS IN  
14 DIAMANTE CABO SAN LUCAS THAT YOU WERE GOING TO  
15 HAVE THEM PAY FOR YOUR LEGAL FEES AS A RESULT OF



16 THIS LITIGATION?

17 A. NO.

18 Q. WHY DIDN'T YOU SPEND MONEY ON THE  
19 MASTER PLANNING INFRASTRUCTURE WHILE THE GOLF WAS  
20 BEING BUILT? THE GOLF COURSE.

21 MS. CROWTHER: WHICH PROPERTY?

22 MR. RICHARDS: WELL, HE DIDN'T

23 BUILD ONE IN DIAMANTE DEL MAR, SO --

24 THE DEPONENT: WHAT ARE YOU TALKING  
25 ABOUT? WHAT'S THE QUESTION?

0448

1 BY MR. RICHARDS:

2 Q. WHY DIDN'T YOU SPEND MONEY ON THE  
3 ENGINEERING, SEWAGE AND WATER TO THE HOMESITES  
4 WHILE YOU WERE BUILDING THE GOLF COURSE?

5 A. WHY DIDN'T I?

6 Q. WHY DIDN'T YOU.

7 A. YOU'RE SAYING THAT WE DIDN'T?

8 Q. YEAH. I'M SAYING THAT YOU -- THAT  
9 YOU TESTIFIED YESTERDAY THAT THESE HOMESITES DON'T  
10 HAVE ANY, YOU KNOW, INFRASTRUCTURE YET.

11 A. WELL, YOU HAVE -- YOU WORK WITHIN A  
12 BUDGET. THERE'S INFRASTRUCTURE THAT WE DID DO.  
13 AND WE DID EVERYTHING THAT WE WERE SUPPOSED TO DO  
14 BASED ON THE FUNDING THAT WE HAD.

15 SO I DON'T UNDERSTAND THE QUESTION  
16 AS TO WHY DIDN'T WE DO SOMETHING THAT WE WEREN'T  
17 FUNDED TO DO.

18 Q. YOU WEREN'T FUNDED TO BUILD  
19 INFRASTRUCTURE TO THE HOMESITES?

20 A. NO. WE DID EVERYTHING WE WERE  
21 FUNDED TO DO.

22 Q. YOU'RE SAYING -- SO YOU'RE SAYING  
23 THE LEHMAN LOAN DIDN'T COVER -- IT ONLY COVERED  
24 THE GOLF COURSE?

25 A. IT COVERED WHAT WE DID AND WHAT

0449

1 INFRASTRUCTURE THAT WE DID. THAT WAS ALL  
2 PREAPPROVED AND ALL DONE ON THE BASIS OF WHAT THE  
3 PURPOSE OF THE FUNDING IS.

4 Q. DID IT GO OVER BUDGET?

5 A. DID WHAT GO OVER BUDGET?

6 Q. THE BUILDING OF THE GOLF COURSE.

7 A. NO.

8 Q. WHAT WAS THE BUDGET FOR THE GOLF  
9 COURSE?

10 A. I BELIEVE IT WAS 8 MILLION DOLLARS,  
11 I BELIEVE. I'M NOT SURE.

12 Q. AND HOW MUCH HAVE YOU -- HOW MUCH  
13 DID YOU SPEND BUILDING THE GOLF COURSE?

14 A. ROUGHLY WHAT THE BUDGET CALLED FOR.  
15 I'M NOT SURE EXACTLY WHAT THE NUMBERS WERE.

16 Q. BECAUSE YOU TESTIFIED YESTERDAY  
17 THAT 125 MILLION DOLLARS HAD BEEN SPENT BASICALLY  
18 FROM THE DRAWDOWNS OF THE LOANS.

19 A. YES.

20 Q. AND WHAT I COULDN'T UNDERSTAND WHEN  
21 I WAS GOING OVER MY LEGAL ADDITION YESTERDAY --  
22 AND LAWYERS AREN'T VERY GOOD AT MATH -- IS IF THE  
23 GOLF COURSE WAS 8 MILLION DOLLARS, HOW DID THE  
24 OTHER 142 MILLION -- OR NOT 142, BUT HOW DID THE  
25 117 MILLION GET SPENT?

0450

1 A. IS THAT A QUESTION?

2 Q. YEAH.

3 A. DESALINATION PLANT, INFRASTRUCTURE,  
4 PERMITTING, PLANNING, ENGINEERING, CONSTRUCTION.

5 Q. BUT IF THE GOLF COURSE IS  
6 8 MILLION, WHAT IS THE -- WHAT IS THE -- WHAT I  
7 DON'T UNDERSTAND IS IF THE -- IF THE GOLF COURSE  
8 IS 8 MILLION DOLLARS AND THE DESALINATION PLANT,  
9 HOW DO WE GET UP TO THAT -- HOW DO WE SPEND  
10 125 MILLION DOLLARS? IS THERE ANY WAY TO BREAK  
11 IT DOWN?

12 A. I'M SURE I COULD. AND AFTER LUNCH,  
13 I'LL COME WITH A BREAKDOWN FOR YOU, JUST IN  
14 GENERAL.

15 Q. BUT YESTERDAY --

16 A. I DID. I UNDERSTAND.

17 Q. -- YOU SAID YOU WERE GOING TO BRING  
18 SOMETHING AFTER LUNCH. WE DIDN'T GET IT.

19 MS. CROWTHER: YEAH. WHEN HE  
20 OFFERS STUFF, HE --

21 (SPEAKING SIMULTANEOUSLY.)

22 THE DEPONENT: I'LL GIVE YOU A  
23 GENERAL BREAKDOWN. I DON'T KNOW. I'LL DO  
24 WHATEVER I'M SUPPOSED TO DO.

25 MS. CROWTHER: HE CAN TESTIFY ABOUT

0451

1 IT.

2 THE DEPONENT: IF YOU UNDERSTAND  
3 THE PROCESS OF WHAT IT IS, BECAUSE WHEN YOU SAID  
4 MONEY WENT MISSING, AND WHEN YOU MAKE THESE CLAIMS  
5 ON NATIONAL T.V. THAT MONEY WENT MISSING, IF YOU  
6 UNDERSTAND THE CONCEPT OF WHAT HAS TO HAPPEN ON A  
7 DAILY BASIS AND A MONTHLY BASIS, THERE'S THREE  
8 SETS OF CHECKS AND BALANCES AS TO HOW THE MONEY IS  
9 SPENT.

10 AND IT'S VERY DIFFICULT FOR THIS  
11 MONEY TO GO MISSING, SO TO SPEAK.

12 BY MR. RICHARDS:

13 Q. BY THE WAY, DID YOU PROVIDE A  
14 HUMMER FOR MCNAMEE WHEN HE WAS ON PROPERTY?

15 A. NO.

16 Q. WHAT I DON'T -- WHAT I DON'T  
17 UNDERSTAND IS -- WELL, WHAT I'M TRYING TO  
18 UNDERSTAND IS YOU GET 125 MILLION DOLLARS, AND  
19 WE'RE NOW FIVE YEARS LATER.

20 WHEN DID -- WHEN IS YOUR  
21 RECOLLECTION OF WHEN YOU FIRST HAD ACCESS TO THE  
22 125 MILLION DOLLARS?

23 A. MARCH OF '06.

24 Q. OKAY. SO IN MARCH OF '06, YOU GET  
25 ACCESS TO 125 MILLION DOLLARS. AND NOW WE'RE IN

0452

1 JANUARY OF 2010, AND THE GOLF COURSE IS FINALLY  
2 OPEN.

3 YOU'RE OUT OF -- THE LOAN HAS BEEN  
4 COMPLETELY EXHAUSTED, AND WE STILL HAVE ANOTHER  
5 100 TO 200 MILLION DOLLARS' WORTH OF  
6 INFRASTRUCTURE THAT'S GOING TO NEED TO BE BUILT TO  
7 BUILD ALL OF THESE HOUSES AND ALL OF THESE  
8 HOMESITES.

9 AND IT SEEMS TO ME LIKE -- I DON'T  
10 UNDERSTAND HOW THE 125,000 WAS SPENT. SO  
11 THAT'S -- THAT'S --

12 A. SO THIS IS A MANAGEMENT ISSUE? IS  
13 THIS A -- I'M TRYING TO EXPLAIN TO YOU THAT IT WAS  
14 SPENT ON INFRASTRUCTURE, CONSTRUCTION, GOLF  
15 COURSE, DESALINATION PLANT.

16 MS. CROWTHER: KEN, DON'T LEAVE OUT  
17 THE PURCHASE OF THE PROPERTY.

18 THE DEPONENT: PURCHASE OF THE  
19 PROPERTY. YOU KNOW, I THINK AT THE CLOSING --

20 MR. RICHARDS: DO YOU WANT TO  
21 TESTIFY?

22 THE DEPONENT: -- IT WAS 80 MILLION  
23 DOLLARS.

24 (SPEAKING SIMULTANEOUSLY.)

25 THE DEPONENT: BUT HE KNOWS THAT.

0453

1 IT MAY NOT -- YOU KNOW, SO --

2 BY MR. RICHARDS:

3 Q. SO THE PURCHASE OF THE PROPERTY --

4 A. -- I THINK AT THE END OF THE DAY,  
5 WHEN WE PAY THE FEES AND EVERYTHING ELSE, I THINK  
6 THE CLOSING IT WAS CLOSE TO 80 MILLION DOLLARS.

7 Q. OKAY. THAT'S FINE.

8 I GUESS OUR POSITION IS -- SO WE'RE  
9 NOT HIDING THE BALL, IS THAT IF YOU TAKE THE

10 8 MILLION FOR THE GOLF AND THE 5 MILLION FOR THE  
11 DESALINATION PLANT, YOU'VE SPENT 50 MILLION  
12 DOLLARS SINCE THE CLOSING.

13 AND THERE'S 37 MILLION DOLLARS THAT  
14 WE CAN'T FIGURE OUT WHERE IT WENT. SO I'M TRYING  
15 TO FIGURE OUT WHAT ELSE -- WHERE ELSE DOES THAT  
16 MONEY GO TO IF IT'S NOT DESALINATION OR GOLF, IF  
17 YOU KNOW?

18 A. ROAD CONSTRUCTION. MAINTENANCE.  
19 BUILDING CONSTRUCTION. VILLA CONSTRUCTION.

20 Q. THERE'S ONLY ONE VILLA.

21 A. WELL, IT'S A MILLION DOLLARS. YOU  
22 WANT TO KNOW WHERE IT WENT. I'M JUST TRYING --

23 Q. ALL RIGHT.

24 A. AND, AGAIN, ALL THIS IS ITEMIZED  
25 AND IN THE BUDGET. AND IF THIS IS GOING TOWARD

0454

1 WHAT I'VE BEEN DEALING WITH AS FAR AS  
2 MISMANAGEMENT, I'M HAPPY TO HAVE THAT FIGHT IN ITS  
3 PROPER VENUE. BECAUSE I'VE BEEN DEALING WITH THIS  
4 FOR TWO YEARS.

5 Q. BELIEVE IT OR NOT, I'D LIKE TO END  
6 IT. BECAUSE AFTER LISTENING TO THE TESTIMONY  
7 YESTERDAY, I BECAME QUITE CONCERNED THAT IF THE  
8 BANK DOESN'T WANT TO KEEP FINANCING THIS, THAT  
9 THIS LAWSUIT IS NOT HELPING THE SITUATION.

10 A. THIS LAWSUIT HAS HURT TREMENDOUSLY.  
11 THIS LAWSUIT --

12 Q. I MEAN -- YEAH.

13 A. THIS LAWSUIT -- WELL, YOU KNOW,  
14 WE'LL GO TO THAT WHEN WE GET TO DAMAGES.

15 BUT, YOU KNOW, I WAS HOPING, AS I  
16 SAID YESTERDAY, WHEN I TALKED ABOUT WANTING TO SIT  
17 IN FRONT OF THIS PEOPLE AND WANTING TO SIT IN  
18 FRONT OF PEOPLE LIKE JASON WOOLLEY, WHO I THOUGHT  
19 WAS A GOOD GUY, IF HE KNOWS THE FACTS AND HE STILL  
20 WANTS TO PURSUE THIS, HE'LL UNDERSTAND HOW MUCH  
21 THIS LAWSUIT HAS HURT.

22 IT HASN'T HELPED PEOPLE GET CLOSER  
23 TO THEIR MONEY. IT'S HURT. IT'S HURT ME  
24 PERSONALLY. IT'S HURT THE PROJECTS. IT'S HURT  
25 THEIR INVESTMENTS.

0455

1 Q. WE -- BUT IN ALL FAIRNESS, YOU'VE  
2 MADE -- YOU'RE THE ONLY GUY THAT'S MADE MONEY SO  
3 FAR.

4 A. THAT'S NOT TRUE.

5 Q. HAVE MY CLIENTS MADE ANY MONEY?

6 A. THEY MADE -- THEY HAVEN'T WORKED  
7 THEY MADE INVESTMENTS.

8 PHIL KENNER, WHEN HE WAS WORKING,  
9 HE WAS MAKING 240,000 DOLLARS A YEAR THERE. SO IF  
10 YOU SAY GETTING A SALARY FOR YOUR WORK IS MAKING  
11 MONEY, THEN, FINE.

12 Q. BUT YOU ALSO GOT THE 650,000 DOLLAR  
13 REFERRAL FEE.

14 A. NOTHING TO DO WITH IT.

15 Q. IT WAS PART OF, THOUGH, THIS WHOLE  
16 PROCESS. IF YOU DIDN'T DO THE BIG LOAN WITH  
17 LEHMAN, YOU WOULDN'T HAVE HAD THE REFERRAL LOAN.

18 MS. CROWTHER: OBJECTION.  
19 ARGUMENTATIVE. CONCLUSORY. CALLS FOR  
20 SPECULATION. LACKS FOUNDATION.

21 MR. RICHARDS: BUT, I MEAN,  
22 REALISTICALLY, IF YOU'RE -- IF YOU'RE -- AND I'M  
23 NOT BEING ARGUMENTATIVE WHEN I'M ASKING THIS  
24 QUESTION -- THIS NEXT QUESTION. I JUST WANT TO  
25 ESTABLISH IF HE'S ANALYZED THIS.

0456

1 BY MR. RICHARDS:

2 Q. DO YOU BELIEVE IT'S REALISTIC THAT  
3 YOU CAN REMAIN THE MANAGER OF THIS PROJECT, WHERE  
4 IF YOU GOOGLE YOUR NAME, IT'S AFFILIATED WITH ALL  
5 SORTS OF PROBLEMS, WHETHER THEY'RE TRUE OR NOT  
6 TRUE?

7 A. SO YOU'RE SAYING YOU CAN MAKE THESE  
8 OUTRAGEOUS CLAIMS AGAINST ME AND THEN USE THAT TO  
9 GET ME OUT BASED ON -- YOU KNOW IT'S -- THEY'RE  
10 ALL FALSE.

11 AND YOU CAN MAKE ALL THESE FALSE  
12 CLAIMS AND THEN HAVE -- HAVE ME HAVE TO DEAL WITH  
13 THIS ON A DAILY BASIS.

14 I DEAL WITH IT ON A DAILY BASIS,  
15 THESE LAWSUITS THAT YOU'VE PUT AGAINST ME, THAT  
16 ARE NOT TRUE. AND I THINK THAT YOU KNOW THEY'RE  
17 NOT TRUE. PERSONALLY. YOU.

18 AND I DEAL WITH IT EVERY DAY.

19 SO BASED ON THAT, YOU WANT ME TO  
20 STEP ASIDE BASED ON THE FACT THAT YOU MADE THESE  
21 OUTRAGEOUS CLAIMS AGAINST ME. NOW I NEED TO STEP  
22 ASIDE BECAUSE OF THEM.

23 Q. WELL, NO. WE'RE -- THAT'S  
24 INTERESTING THAT YOU HAVE THIS MYOPIC VIEW OF THE  
25 SITUATION.

0457

1 THE -- THE FACT IS IS THAT YOU WERE  
2 FIRST GIVEN -- BECAUSE THESE CASES ARE  
3 CONSOLIDATED NOW.

4 YOU UNDERSTAND THAT?

5 A. YES.

6 Q. YOU HAD A FIRST GROUP OF CLIENTS  
7 THAT GAVE YOU MILLIONS OF DOLLARS, AND THAT WAS A  
8 PROJECT THAT YOU WERE GOING TO BUILD A VERY LARGE  
9 DEVELOPMENT IN.

10 AND, GRANTED, YOU HAD NO  
11 EXPERIENCE, AND THAT PROJECT WAS PRETTY MUCH DEAD.  
12 THERE'S NO PLANS TO DO ANYTHING RIGHT NOW WITH  
13 THAT PROJECT. I MEAN, BECAUSE NOW YOU'RE FOCUSED  
14 ON CABO SAN LUCAS.

15 SO THEN WE GET TO CABO SAN LUCAS,  
16 AND YOU GOT MILLIONS OF DOLLARS OF LOANS WITHOUT  
17 ANY DOCUMENTATION, BECAUSE PHIL SENT THEM TO YOU  
18 AND YOU WERE HAVING A GOOD RELATIONSHIP WITH PHIL  
19 AT THE TIME.

20 AND THAT PROJECT HAS TAKEN YEARS TO  
21 GET TO THE POINT OF WHERE WE'RE AT NOW, WHERE ALL  
22 WE HAVE IS A GOLF COURSE WHERE 30 GOLFERS A DAY  
23 ARE GOING THERE. THAT'S WHAT I'M LOOKING AT. AND  
24 I'M LOOKING AT --

25 A. IF THAT'S WHAT YOU WANT TO SAY,

0458

1 THAT'S FINE. THAT'S YOUR OPINION.

2 AND IF YOU WANT TO TAKE THAT UP IN  
3 ANOTHER VENUE WHERE YOU'RE SUPPOSED TO, ACCORDING  
4 TO WHAT -- THE OPERATING AGREEMENTS, I'LL -- I'LL  
5 TAKE EVERYTHING WE'VE DONE AND THE POSITION THAT  
6 WE'RE IN, AND I'LL -- I'LL -- I'LL PUT IT IN ANY  
7 VENUE THAT'S APPROPRIATE AND ARGUE MY CASE.

8 Q. WELL, WE'RE IN THIS VENUE, AND ALL  
9 WE'VE GOTTEN IN THIS VENUE IS THE MOST AGGRESSIVE  
10 ATTEMPTS POSSIBLE NOT TO BE IN THIS VENUE.

11 AND I'VE HAD TO SPEND OVER 100  
12 GRAND JUST TO GET 7,000 PAGES OF DISCOVERY.

13 MS. CROWTHER: OKAY. THIS IS SO  
14 ARGUMENTATIVE. LET'S TAKE A BREAK.

15 MR. RICHARDS: I'M NOT ARGUING.

16 MS. CROWTHER: YEAH, YOU ARE.

17 YOU'RE ARGUING.

18 MR. RICHARDS: I'LL JUST GO ON.

19 MS. CROWTHER: LET'S TAKE A BREAK.

20 MR. RICHARDS: LET'S JUST GO ON.

21 MS. CROWTHER: I NEED A BREAK.

22 MR. RICHARDS: YOU DO?

23 MS. CROWTHER: YES.

24 MR. RICHARDS: WHY ARE YOU

25 GETTING -- YOU DON'T HAVE TO GET EXCITED.

0459

1 MS. CROWTHER: I'M NOT EXCITED. I  
2 NEED A BREAK.

3 MR. RICHARDS: OKAY. NO PROBLEM.

4 THE VIDEOGRAPHER: OFF THE RECORD,  
5 COUNSEL?  
6 MR. RICHARDS: YEAH.  
7 THE VIDEOGRAPHER: WE'LL GO OFF THE  
8 VIDEOTAPE RECORD AT 11:08.  
9 (WHEREUPON, A RECESS WAS HELD  
10 FROM 11:08 A.M. TO 11:22 P.M.)  
11 THE VIDEOGRAPHER: AND WE'RE BACK  
12 ON VIDEOTAPE RECORD AT 11:22 A.M.  
13 MR. RICHARDS: ALL RIGHT. CAN  
14 YOU -- DO YOU HAVE THE DOCUMENT ON YOUR SCREEN  
15 THERE?  
16 MS. CROWTHER: OUR SCREEN IS DARK.  
17 MR. RICHARDS: OH, IT IS?  
18 MS. CROWTHER: YEAH. LET ME SEE.  
19 NO. LOOKS LIKE MAYBE IT'S NOT PLUGGED IN.  
20 MR. RICHARDS: DID IT GET  
21 UNPLUGGED? OH, WAIT. THERE WE GO.  
22 MS. CROWTHER: IT STILL LOOKS LIKE  
23 WE'RE NOT GETTING POWER.  
24 THE VIDEOGRAPHER: SHALL WE GO OFF  
25 THE RECORD MOMENTARILY?  
0460  
1 MR. RICHARDS: THERE SHOULD BE  
2 POWER.  
3 MS. CROWTHER: THERE WE GO.  
4 MR. RICHARDS: YOU GOT IT.  
5 BY MR. RICHARDS:  
6 Q. ALL RIGHT. I'M SHOWING YOU, WHICH  
7 IS KJ 274, A E-MAIL THAT YOU SENT ON JUNE 19TH,  
8 2005.  
9 DO YOU KNOW WHAT THIS E-MAIL IS?  
10 A. NO.  
11 Q. YOU SAID THAT -- THAT THERE WAS A  
12 MISTAKE ON THE BAJA OWNERSHIP, AND THEN THE -- IT  
13 LISTS THESE PARTIES AS THE BREAKDOWN OF THE  
14 OWNERS.  
15 IS THIS AN ACCURATE BREAKDOWN?  
16 MS. CROWTHER: WE'RE ON KJ 275 NOW?  
17 MR. RICHARDS: YEAH.  
18 THE DEPONENT: I DON'T KNOW.  
19 BY MR. RICHARDS:  
20 Q. WHAT ABOUT THIS?  
21 MS. CROWTHER: WHAT DO YOU MEAN,  
22 "THIS"?  
23 THE DEPONENT: I DON'T KNOW.  
24 BY MR. RICHARDS:  
25 Q. OF D.D. -- OH, SORRY. OF D.D.M.  
0461  
1 A. I DON'T KNOW.

2 Q. I'M SHOWING YOU WHICH IS NOW KJ  
3 309. THIS IS AN E-MAIL YOU SENT ON JULY 6TH,  
4 2005. IT SAYS -- IT'S AN E-MAIL THAT WAS  
5 INITIALLY RECEIVED FROM CHARLES WESLEY.

6 DO YOU KNOW WHO THAT IS?

7 A. NO.

8 Q. AND THEN YOU SEND -- YOU SEND AN  
9 E-MAIL, WHICH IS KJ 310. YOU SEND AN E-MAIL:

10 "TO BE HONEST, RIGHT NOW WOULD  
11 BE A GREAT TIME TO GO TO FT.  
12 LAUDERDALE AND TO SWITZERLAND."

13 WHAT DO YOU MEAN BY THAT?

14 A. I DON'T KNOW.

15 Q. THEN YOU SAY:

16 "CAN'T DO MUCH HERE WITHOUT  
17 MONEY." THEN YOU SAY, "I CAN ONLY DO  
18 THE CORK TRICK SO MANY TIMES BEFORE  
19 THEY START TO KNOW."

20 WHAT DO YOU MEAN BY THE CORK TRICK?

21 A. IF I'M LOOKING AT THAT POINT OF  
22 REFERENCE, AT THAT TIME, IN JULY OF '07, WE WERE  
23 SUPPOSED TO HAVE HAD --

24 Q. THAT WAS JULY OF '05.

25 A. JULY 7TH OF '05.

0462

1 Q. YEAH.

2 A. WE WERE SUPPOSED TO HAVE HAD THE  
3 HARD MONEY OR THE -- THE DEPOSIT, THE HARD  
4 DEPOSIT, ON THE CABO PROPERTY BY APRIL.

5 AND MONEY DIDN'T START GOING THERE  
6 UNTIL MAY. AND IT WAS, AS WE DISCUSSED MANY  
7 TIMES, PHIL'S RESPONSIBILITY TO BRING THE MONEY  
8 IN. HE WAS OBVIOUSLY HAVING DIFFICULTY DOING IT.

9 AND IT WAS -- MY JOB AT THAT POINT  
10 WAS TO KEEP THE SELLER ENGAGED, SO HE DIDN'T JUST  
11 TAKE WHATEVER MONEY THAT WAS DEPOSITED AT THAT  
12 TIME AND CANCEL THE CONTRACT.

13 Q. BUT WHAT'S A CORK TRICK?

14 A. I DON'T REMEMBER. IT WAS A LITTLE  
15 THING WITH WINE CORKS. IT WAS A JOKE.

16 Q. DO YOU WANT ME TO GET SOME WINE  
17 CORKS FOR YOU TO SHOW US?

18 A. I'M SURE I PROBABLY COULDN'T DO IT.

19 Q. ALL RIGHT. THIS IS KJ 312.

20 YOU STATE THAT:

21 "YOU WANT ME TO MAKE AN EARLY  
22 MORNING CALL TO RODNEY. HE WAS DUE  
23 TO SIGN THE PAPERS. AND THEN I WILL  
24 GET OFF TO MASOOD AS EARLY AS I CAN.  
25 I SAW MOST OF THE AIRPORT" --



0463

1 "AIRPORT DEALS."  
2 WHAT ARE YOU REFERRING TO IN THIS  
3 E-MAIL?  
4 A. FOR RODNEY, YOU MEAN?  
5 Q. YEAH. WHO'S RODNEY?  
6 A. HE -- I BELIEVE THAT WOULD BE  
7 RODNEY DALTON, A GENTLEMAN INTRODUCED BY PHIL, WHO  
8 HAD SOME TYPE OF SCHEME, WHICH OBVIOUSLY TURNED  
9 OUT TO BE A SCAM, IN LONDON. AND THAT'S WHO I  
10 BELIEVE I'M REFERRING TO.  
11 Q. ALL RIGHT. ON THIS E-MAIL, WHICH  
12 IS 315, YOU STATE:  
13 "LYNN IS WORKING ON IT THIS  
14 MORNING. AL HEARD FROM NOBLE GUY  
15 (PHONETICALLY), WHO GAVE HIM A  
16 CONTACT."  
17 WHO'S AL?  
18 A. PROBABLY REFERRING TO AL GUTIERREZ.  
19 Q. AND THEN YOU SAID:  
20 "I DON'T MEAN TO OFFEND DONNY BY  
21 PUTTING HIM IN THE SAME SENTENCE WITH  
22 TARA (PHONETICALLY)."  
23 WHAT DO YOU MEAN BY THAT?  
24 A. AGAIN, AT THIS TIME, IT WAS A  
25 DIFFICULT TIME. AND THAT MONEY WAS IN DEPOSIT

0464

1 WITH THE SELLER IN CABO. PHIL WAS TRYING  
2 DESPERATELY TO COME UP WITH THE REST OF THE MONEY.  
3 WE WERE TALKING TO -- HE WAS TALKING AS WAS I  
4 OTHER LENDERS. TARA WAS SOMEONE WHO WAS  
5 BROKERING, I BELIEVE, SOME HARD MONEY DEALS FOR  
6 PHIL.  
7 AND DONNY WAS A FRIEND OF PHIL'S,  
8 WHO WAS ALSO TRYING TO PUT IN TOUCH WITH HARD  
9 MONEY GUYS. AND WE DIDN'T HAVE THE HIGHEST  
10 OPINION AT THE TIME, OF TARA. AND I WAS TRYING TO  
11 BE NICE TO PHIL'S FRIEND.  
12 Q. ON 316 YOU STATE THAT -- OH, BY THE  
13 WAY, IF YOU -- WHY WERE YOU TALKING TO LENDERS IF  
14 PHIL WAS SUPPOSED TO BE IN CHARGE OF FUNDING?  
15 A. I WAS HELPING IN ANY WAY I COULD.  
16 Q. ON 316 HERE, YOU STATE THAT YOU  
17 "HAVE BENITO DRIVING THE LEAD CAR AND BOB G.  
18 FOLLOWING BEHIND ME," AND THAT YOU "HAD A  
19 CONVERSATION WITH YOUR F.B.I. BUDDY, WHO IS  
20 SERIOUS ABOUT HELPING US OUT."  
21 IS THAT BECAUSE YOU HAVE THE F.B.I.  
22 HELP YOU OUT -- OR FORMER F.B.I. AGENTS? IS THAT  
23 WHAT YOU MEANT?

24 A. NO.  
25 Q. BUT YOU HAVE A BUDDY THAT'S IN THE  
0465 F.B.I.?

1 A. HE WAS.  
2 Q. AND WHO'S THAT?  
3 A. JOHN BEHNKE.  
4 Q. AND THEN IT SAYS:  
5 "I AM SENDING HIM ALL THE PLANS  
6 AS I GET THEM TODAY."  
7 YOU SAID HE WAS THE RIGHT-HAND MAN  
8 OF LOUIS FREEH IN THE E-MAIL; IS THAT CORRECT?

9 A. YES.  
10 Q. SO DO YOU HAVE SOME SORT OF  
11 INFLUENCE OVER THE F.B.I.?

12 A. NO.  
13 Q. WAS JOHN BEHNKE EMPLOYED BY THE  
14 F.B.I. AT THE TIME IN THIS E-MAIL?

15 A. YES.  
16 Q. SO YOU -- AT THE TIME OF THIS  
17 E-MAIL, YOU HAD A BUDDY IN THE F.B.I.?

18 A. YES.  
19 Q. AND EXPLAIN TO ME HOW YOU HAD A  
20 BUDDY IN THE F.B.I.

21 A. WHERE I MET HIM?

22 Q. YEAH.

23 A. WE BOTH WORKED AT A CAMP FOR KIDS  
24 WITH CANCER ABOUT 20 YEARS AGO, AND WE BOTH WENT  
25 0466

1 TO THAT CAMP EVERY YEAR, AS COUNSELORS, AND WE  
2 BECAME FRIENDS.

3 Q. AND ARE YOU -- ARE YOU AWARE THAT  
4 THE -- THAT THE F.B.I. IS THE INVESTIGATIVE AGENCY  
5 ON THE GRAND JURY THAT YOU WERE REFERRING TO  
6 YESTERDAY?

7 A. YES.

8 Q. AND HAVE YOU ASKED JOHN BEHNKE TO  
9 ASSIST YOU IN THAT INVESTIGATION?

10 A. NO.

11 Q. HAVE YOU MENTIONED THAT HIS FORMER  
12 AGENCY IS INVESTIGATING YOU?

13 A. HE'S AWARE OF IT, YES.

14 Q. AND WHAT HAS HE DONE, IF ANYTHING,  
15 TO HELP YOU?

16 MS. CROWTHER: OBJECTION. LACKS  
17 FOUNDATION.

18 THE DEPONENT: NOTHING.

19 BY MR. RICHARDS:

20 Q. YOU DIDN'T ASK HIM TO -- FOR ANY --

21 A. ABSOLUTELY NOT.

22 Q. WHY NOT?

23 A. I HIRED ATTORNEYS TO HELP ME. I  
24 DON'T THINK IT'S PROPER TO HAVE -- TO DO IT ANY  
25 OTHER WAY.

0467

1 Q. DID YOU HIRE JOHN BEHNKE TO  
2 PROVIDE -- WHAT'S F.B.O. AT C.S.O.? WHAT DOES  
3 THAT MEAN? THE NEW F.B.O. AT CABO SAN LUCAS,  
4 RIGHT HERE (INDICATING)?

5 A. WELL, WHEN WE WERE INTERESTED IN  
6 THE AIRPORT, WE FELT THAT, HAVING INVOLVEMENT IN  
7 THE AIRPORT, SECURITY AT THE AIRPORT WAS  
8 IMPORTANT.

9 Q. THE AIRPORT WHERE?

10 A. IN CABO SAN LUCAS.

11 Q. YOU WERE GOING TO HAVE YOUR OWN  
12 AIRPORT?

13 A. NO. WHEN WE WERE INTERESTED IN --  
14 HAD AN INTEREST IN THE AIRPORT.

15 Q. OH. AND SO DID YOU HIRE HIM TO  
16 PROVIDE ANYTHING?

17 A. WE EVENTUALLY HIRED HIM FOR THE  
18 DIAMANTE DEL MAR PROJECT AFTER WE GOT FUNDED, YES.

19 Q. AND WHAT DOES HE DO FOR THE  
20 PROJECT?

21 A. HE'S DIRECTOR OF SECURITY.

22 Q. NOW?

23 A. YES.

24 Q. SO HE LIVES DOWN THERE?

25 A. SPENDS MOST OF HIS TIME DOWN THERE,

0468

1 YES.

2 Q. AND WHAT DOES HE GET PAID?

3 A. I DON'T KNOW EXACTLY.

4 Q. APPROXIMATELY.

5 A. 200,000.

6 Q. AND IS THERE A LOT OF SECURITY  
7 ISSUES ON THE PROPERTY PRESENTLY?

8 A. THERE'S ALWAYS -- THERE ARE ALWAYS  
9 ISSUES DEALING WITH SECURITY, YES.

10 Q. LIKE WHAT?

11 A. IN GENERAL IN CABO OR --

12 Q. YEAH, IN GENERAL.

13 A. WELL, I MEAN, THE REASON THAT WE  
14 HIRED HIM IS BECAUSE WE HAVE TO SELL A LOT OF REAL  
15 ESTATE, AND WE WANTED TO GIVE PEOPLE THE COMFORT  
16 LEVEL THAT WE HAD A VERY SERIOUS PERSON THAT WAS  
17 IN CHARGE OF SECURITY IN GENERAL.

18 IT'S PEOPLE TRYING TO GET ACCESS TO  
19 THE PROPERTY. WE HAVE TO -- WE HAVE OBVIOUSLY A

20 LARGE INVESTMENT THAT WE HAVE TO PROTECT. SO  
21 THERE ARE ISSUES THAT WE NEED TO DEAL WITH.

22 Q. YOU SAID THAT YOU HAVE BENITO  
23 DRIVING THE LEAD CAR. WHAT DOES THAT MEAN, "THE  
24 LEAD CAR"?

25 A. THIS WAS ALL A -- THAT WAS A JOKE.

0469

1 AT THE SAME TIME WAS WHEN WE WERE  
2 SCRAMBLING AND DOING EVERYTHING WE COULD TO KEEP  
3 THIS PROJECT ALIVE. AND I WAS DOING THE BEST I  
4 COULD, AND THAT'S IN JEST.

5 BENITO WAS A HANDYMAN THAT WORKS AT  
6 PHIL'S HOUSE NOW. I DON'T THINK HE HAS A LICENSE.

7 Q. OKAY. BECAUSE YOU SAID:

8 "I DON'T WANT TO GET SHOT BY  
9 SENOR BULNES' GUYS IN THE CROSSFIRE  
10 LOOKING FOR YOU."

11 A. THAT'S ACTUALLY PHIL KIND OF SAYING  
12 THAT.

13 Q. YEAH. TO YOU.

14 WELL, WHO'S SENOR BULNES --

15 A. I DIDN'T SAY THAT.

16 Q. AND WHO'S SENOR BULNES?

17 A. HE'S A PROPERTY OWNER IN CABO.

18 Q. DID YOU HAVE A DISPUTE WITH HIM?

19 A. NO.

20 Q. SO IS THAT A JOKE, TOO?

21 A. I DIDN'T WRITE THAT.

22 Q. I KNOW. BUT DID YOU INTERPRET IT

23 AS A JOKE?

24 A. YES.

25 Q. IT SAYS -- YOU WRITE TO HIM:

0470

1 "BILL IS ON IT AND WILL BE  
2 WORKING WITH BOTH OF THEM ALL DAY. I  
3 WILL LET YOU KNOW AS SOON AS I GET  
4 BACK."

5 WHO'S BILL?

6 MS. CROWTHER: YOU'VE JUST MOVED TO

7 A NEW E-MAIL?

8 MR. RICHARDS: YES. 317. SORRY.

9 BY MR. RICHARDS:

10 Q. BILL NAJAM?

11 A. I ASSUME SO.

12 Q. WHY WAS HE REVIEWING DOCUMENTS FOR

13 HAWAII?

14 A. PHIL WOULD ALWAYS SEND HIM

15 DOCUMENTS, TO HELP HIM.

16 Q. DID YOU EVER DO A DEAL WITH

17 JORGE DIAZ?

18 A. I DON'T BELIEVE SO, NO.  
19 Q. OKAY. I'M LOOKING AT 319. NO.  
20 I'M LOOKING NOW AT 327.  
21 YOU WROTE PHIL AN E-MAIL SAYING  
22 THAT YOU "HAVE THE DOCS THAT YOU DOWNLOADED FROM  
23 THE COMPUTER. I WILL BILL FAX THE L.L.C. DOCS.  
24 GRACIAS, AMIGO.  
25 AND JOSHUA BLUMAN IS ASKING YOU TO  
0471 FAX BACK THE L.L.C. DOCS.  
1 WHAT L.L.C. IS HE TALKING ABOUT?  
2 A. I DON'T KNOW.  
3 Q. AND THEN IT SAYS -- YOU WRITE --  
4 YOU TELL HIM THAT MARK THALMANN ALSO WORKS FOR  
5 BAJA MANAGEMENT, L.L.C., AND DIAMANTE DEL MAR,  
6 L.L.C., AND YOU LIVE THERE FROM NINE YEARS.  
7 AND YOU SAY YOU'LL "GET THE L.L.C.  
8 PAPERWORK TO YOU AS SOON AS POSSIBLE."  
9 WHAT PAPERWORK ARE YOU REFERRING  
10 TO?  
11 A. I DON'T KNOW.  
12 Q. THEN YOU TELL JOSH, "I'M  
13 SELF-EMPLOYED."  
14 WHY DID YOU SAY YOU WERE  
15 SELF-EMPLOYED?  
16 A. I DON'T KNOW.  
17 Q. THIS IS ON 327.  
18 MS. CROWTHER: IT'S ACTUALLY 328.  
19 MR. RICHARDS: 328. SORRY.  
20 BY MR. RICHARDS:  
21 Q. "I'M TRYING TO GET THE APPRAISAL  
22 TO YOU. WE SHOULD GET IT TODAY. PHIL  
23 WANTED ME TO TELL YOU THAT IF YOU WANT  
24 TO USE THE HOUSE IN LAS VEGAS, WE NEED  
25 TO CLOSE NEXT WEEK. SOMEHOW I AM SURE  
0472 WE ALREADY GOT IN THAT POINT TO YOU."  
1 WERE YOU TRYING TO ENCUMBER YOUR  
2 PROPERTY IN VEGAS FOR SOMETHING RELATED TO  
3 DIAMANTE AND BAJA?  
4 A. NO. WE HADN'T PURCHASED IT YET.  
5 Q. SO WAS THIS FOR THE LOAN ON THE  
6 PROPERTY?  
7 A. YES. PHIL WAS HELPING -- JOSH  
8 BLUMAN WAS A CONTACT OF PHIL'S WHO WAS A MORTGAGE  
9 BROKER, I BELIEVE.  
10 Q. THIS -- THIS IS ON 331. IT SAYS:  
11 "THIS" -- "THIS IS PART OF WHAT  
12 IS GOING TO MASOOD THIS MORNING. LET  
13 ME KNOW WHAT YOU THINK.  
14  
15

16 THAT'S FROM YOU. IT SAYS,  
17 "CLUB" -- "CABO CLUB EXECUTIVE SUMMARY."  
18 WHY WERE YOU SENDING MASOOD CABO  
19 CLUB EXECUTIVE SUMMARY?  
20 A. WHAT'S THE DATE THERE?  
21 Q. OH, JULY 5TH, 2005.  
22 MS. CROWTHER: 15TH, ACTUALLY.  
23 MR. RICHARDS: 15TH. SORRY.  
24 THE DEPONENT: I'M SURE TO KEEP HIM  
25 ABREAST OF -- AS TO WHAT WE WERE DOING, SO WE CAN  
0473  
1 EVENTUALLY, WHEN THE TIME CAME, BE IN POSITION TO  
2 GET FUNDING.  
3 BY MR. RICHARDS:  
4 Q. OKAY. I'M SHOWING YOU AN INVOICE  
5 FROM FIVE STAR PRODUCTIONS, FROM DEL REY BEACH,  
6 DATED MARCH 1ST -- MARCH 9TH OF '01. AND IT HAS  
7 SCOTT WOOLLEY'S NAME ON IT. AND IT'S KJ 3 --  
8 3224. AND IT'S SIGNED.  
9 WHO SIGNED THIS?  
10 A. I BELIEVE ME.  
11 Q. AND THAT'S 2-14-03?  
12 A. OKAY.  
13 Q. RIGHT. AND THIS IS FOR -- IT SAYS  
14 HERE THAT BEFORE PRINTING THE BROCHURE, YOU HAVE  
15 TO PAY 40 PERCENT OF THE BALANCE.  
16 DO YOU SEE THAT?  
17 A. OKAY.  
18 Q. AND IT'S CIRCLED, AND THAT -- AND  
19 THAT HAS A CHECK NUMBER:  
20 "PAID DIAMANTE DEL MAR, CHECK  
21 NUMBER 1076, 3-5-03."  
22 DOES THAT MAKE SENSE?  
23 A. YES.  
24 Q. OKAY. AND THEN INITIALLY, TO BEGIN  
25 PRODUCTION, YOU HAD TO PAY 56,400 FOR DIAMANTE DEL  
0474  
1 MAR, CHECK NUMBER 1065.  
2 DO YOU SEE THAT?  
3 A. YES.  
4 Q. AND THAT'S 2-15-03.  
5 DOES THAT LOOK LIKE THOSE ARE NOTES  
6 THAT YOU WROTE TO -- REFLECTING THE CHECKS THAT  
7 YOU AUTHORIZED TO BE CUT?  
8 A. THAT'S NOT MY HANDWRITING THERE.  
9 Q. BUT DO YOU RECOGNIZE IT AS --  
10 A. YES.  
11 Q. WHO'S HANDWRITING IS IT?  
12 A. I DON'T KNOW.  
13 Q. BUT IT LOOKS LIKE SOMETHING YOU

14 GUYS WOULD DO?

15 MS. CROWTHER: LACKS FOUNDATION.

16 BY MR. RICHARDS:

17 Q. OKAY. THIS IS AN INVOICE TO  
18 DIAMANTE DEL MAR THAT -- THAT YOU PROVIDED. IT'S  
19 KJ 3225. THAT THERE WAS A FEE OF 100 -- THE  
20 INVOICE IS DATED 2-17-03, AND THAT THEY WERE  
21 CHARGING YOU 112,000 DOLLARS TO PRINT UP THESE  
22 PACKAGES AND THEN DO THE BROCHURE AND THEN THE WEB  
23 SITE DESIGN.

24 AND THAT IT REFLECTS 56,400 WAS  
25 PAID ON 2-20-03 AND 45,120 WAS PAID ON 3-6-03.

0475

1 DO YOU HAVE ANY REASON TO BELIEVE  
2 THAT THOSE -- THAT THE PAYMENTS REFLECTED ARE  
3 INACCURATE?

4 A. NO.

5 Q. OKAY. NOW, I'M SHOWING YOU INVOICE  
6 3-24-03, WHICH IS A SHIPPING FEE INVOICE TO -- FOR  
7 VARIOUS FEDERAL EXPRESSES.

8 AND ONE OF THE -- AND THIS IS ON  
9 JOWDY 3226. ONE OF THE PLACES THESE PACKAGES WERE  
10 SENT, IT'S A PLACE IN FLORIDA.

11 DO YOU KNOW HOW TO PRONOUNCE THAT  
12 NAME?

13 A. LOOKS LIKE ZEPHYRHILLS.

14 Q. ZEPHYRHILLS.

15 AND THAT WAS APPARENTLY SHIPPED  
16 PRIOR TO THE DATE OF THIS INVOICE, 3-24-03.

17 DID -- WHY DID YOU HAVE STUFF SENT  
18 TO ZEPHYRHILLS?

19 A. I DON'T KNOW.

20 Q. ISN'T THAT TRUE THAT THAT'S WHERE  
21 ROGER CLEMENS' TRAINING CAMP WAS, AND THAT'S WHY  
22 YOU WANTED IT THERE, SO HE COULD HAND OUT THESE  
23 MATERIALS THERE?

24 A. I HAVE NO IDEA.

25 Q. WELL, DO YOU KNOW WHERE HIS

0476

1 TRAINING CAMP IS?

2 A. I DON'T BELIEVE IT WAS EVER IN  
3 ZEPHYRHILLS, SO ...

4 Q. DO YOU REMEMBER RECEIVING THE  
5 PACKAGES PRIOR TO THIS INVOICE BEING SENT, IN  
6 THESE VARIOUS LOCATIONS: NEW YORK, CONNECTICUT?

7 IF YOU LOOK -- IF YOU TAKE A LOOK  
8 WHERE MY ARROW IS --

9 A. UH-HUH.

10 Q. -- THERE WAS A PACKAGE TO CT, WHICH  
11 IS CONNECTICUT, LOS ANGELES, ZEPHYRHILLS,

12 NEW YORK.

13 DO YOU REMEMBER RECEIVING THE  
14 PRINTING AROUND THAT TIME?

15 A. WHAT TIME?

16 Q. MARCH -- MARCH OF '03.

17 A. I DON'T REMEMBER, NO.

18 Q. WELL, DO YOU KNOW WHEN YOU RECEIVED  
19 THE BROCHURES? I MEAN, DOES THAT -- DOES THAT --  
20 DOES THIS INVOICE REFRESH YOUR MEMORY AS TO WHEN  
21 YOU WOULD HAVE RECEIVED THEM?

22 A. IF IT SAYS THEY WERE SHIPPED OUT IN  
23 MARCH 24TH OF '03, I'M SURE I RECEIVED THEM  
24 SHORTLY THEREAFTER.

25 Q. WELL, THAT'S WHEN YOU WERE BILLED.

0477

1 LET ME GO BACK OVER THE AGREEMENT  
2 THAT YOU SIGNED.

3 IT SEEMS TO ME THAT -- THAT THEY --  
4 BEFORE THEY PRINT THEIR BROCHURE, YOU HAD TO PAY  
5 40 PERCENT. AND THEN THE FINAL 10 PERCENT IS UPON  
6 DELIVERY OF WEB SITE AND PACKAGING.

7 SO I'M ASSUMING THAT -- THAT --  
8 THAT THIS INVOICE WAS DATED 2-17-03, AND YOU PAID  
9 THESE PRIOR TWO PAYMENTS, THAT YOU DON'T HAVE ANY  
10 REASON TO BELIEVE YOU DIDN'T PAY THEM.

11 THAT AT THAT POINT, AFTER 2-17-03,  
12 THE WORK WAS SHIPPED TO YOU. I MEAN -- RIGHT?  
13 THAT'S WHAT -- THESE ARE YOUR RECORDS, SO I'M  
14 JUST --

15 A. THAT WOULD BE IMPOSSIBLE.

16 Q. WHAT WOULD BE IMPOSSIBLE?

17 A. WELL, GO TO THE FIRST ONE.

18 Q. YEAH. NO PROBLEM.

19 A. I BELIEVE I SAW A QUOTE FROM A  
20 PROPOSAL DATED SOMETIME IN FEBRUARY, SO I DON'T  
21 THINK THAT WE COULD HAVE HAD IT DONE. EVEN --  
22 THIS WORK PRODUCT HERE, FOR THAT PROPOSAL, IS -- I  
23 MEAN GO UP A LITTLE BIT.

24 Q. SURE.

25 A. GO UP MORE. MARCH 9TH. OKAY.

0478

1 (DOCUMENT REVIEWED BY THE DEPONENT.)

2 THE DEPONENT: GO DOWN.

3 BY MR. RICHARDS:

4 Q. HERE, I CAN -- I CAN --

5 A. SO -- NO. SO THAT'S -- THIS IS  
6 MARCH 9TH. SO IF YOU'RE SAYING THAT I GOT -- THIS  
7 IS MARCH 9TH. AND IT SAYS I HAVE TO MAKE THE  
8 FIRST TWO PAYMENTS; CORRECT?

9 Q. WHICH DATE ARE YOU LOOKING AT, THIS



10 DATE (INDICATING)?

11 A. YES.

12 Q. THAT'S MARCH 9TH OF '01. I'M  
13 SAYING THAT --

14 A. THAT'S THE WRONG -- THAT'S THE  
15 WRONG DATE.

16 Q. YEAH. AND YOU MADE A PAYMENT WITH  
17 THIS CHECK NUMBER, 1065. THIS IS ON -- THIS IS  
18 YOUR WRITING.

19 NOT YOU PERSONALLY, BUT SOMEONE AT  
20 YOUR DIRECTION --

21 A. OKAY.

22 Q. -- ACKNOWLEDGED THE CHECK NUMBER  
23 THAT WAS PAID.

24 YOU HAVE NO REASON TO BELIEVE  
25 THAT'S INACCURATE?

0479

1 A. OKAY.

2 Q. AND THEN ON 3-5-03, THERE WAS --  
3 THERE WAS THIS SECOND PAYMENT. THAT'S WHY IT'S  
4 CIRCLED. AND THEN THAT'S WHEN THEY WERE SUPPOSED  
5 TO SHIP IT.

6 SO I'M JUST TRYING TO FIGURE OUT,  
7 HOW DID -- HOW WOULD WE FIGURE OUT WHEN YOU  
8 ACTUALLY RECEIVED IT IF NOT FOR THE PRINTER'S  
9 RECORDS?

10 A. WELL, GO AHEAD. SO WHAT ARE YOU --  
11 WHEN ARE YOU SAYING THAT WE RECEIVED IT?

12 Q. I'M -- I'M SAYING THAT YOU RECEIVED  
13 THEM ON OR AROUND -- I'M SAYING YOU RECEIVED THEM  
14 BETWEEN MARCH -- FEBRUARY 17TH, 2003, AND  
15 MARCH 24TH, 2003, BECAUSE THEY'RE BILLING YOU  
16 ALREADY BY THAT TIME FOR STUFF THAT WAS ALREADY  
17 SHIPPED.

18 SO I DON'T KNOW THE EXACT DATE.  
19 I'M BEING OBJECTIVE THAT YOU -- YOU PAID -- THAT  
20 YOU GOT AN INVOICE FOR JUST THE BALANCE, THE  
21 10 PERCENT. THAT'S -- BUT THEY SAID THEY WOULD  
22 SHIP IT.

23 YOU'D ONLY HAVE TO PAY UNTIL AFTER  
24 THEY SHIPPED. AND THIS INVOICE WAS GENERATED ON  
25 THE 17TH OF -- OF FEBRUARY.

0480

1 SO I'M -- SO -- IT'S -- IT SEEMS TO  
2 ME THAT -- THAT THEY SHIPPED IT AFTER THAT DATE.  
3 THAT'S WHY THEY'RE ASKING FOR THE FINAL BALANCE,  
4 PURSUANT TO THE CONTRACT.

5 A. I DON'T KNOW IF THEY SHIPPED IT IN  
6 MARCH. I WOULD SAY THAT --

7 Q. WELL, I THINK THEY SHIPPED IT IN

8 FEBRUARY, BUT I'M SAYING WHETHER --  
9 (SPEAKING SIMULTANEOUSLY.)

10 THE DEPONENT: I DON'T KNOW WHAT  
11 THE POINT IS, SO --  
12 BY MR. RICHARDS:

13 Q. WELL, MY POINT IS: DO YOU THINK --  
14 DO YOU -- BASED ON REVIEWING YOUR PAYMENTS, IS IT  
15 FAIR TO SAY THAT YOU RECEIVED THESE BROCHURES  
16 EITHER IN FEBRUARY OR MARCH OF 2003?

17 A. I THINK THE EARLIEST WE RECEIVED  
18 THEM IS MARCH.

19 BUT I STILL DON'T UNDERSTAND WHAT  
20 THE DIFFERENCE IS, SO YOU CAN EXPLAIN IT TO ME.

21 Q. WELL, THERE'S NO -- THERE'S --  
22 THERE'S NO REAL DIFFERENCE BETWEEN MARCH OR  
23 FEBRUARY. I'M JUST TRYING TO CORROBORATE THE  
24 DATE. THAT'S IT. IF IN MARCH -- SO YOU --

25 A. I WOULD SAY IT WOULD HAVE TO BE

0481

1 LATE IN MARCH, SO MAYBE ON THAT 24TH DATE.

2 BUT I DON'T -- I DON'T KNOW.

3 Q. OKAY. WHY WOULD YOU SAY IT WOULD  
4 HAVE TO BE LATE MARCH? WAS THERE ANY OTHER FACTS  
5 THAT WOULD HELP --

6 (SPEAKING SIMULTANEOUSLY.)

7 THE DEPONENT: I THOUGHT THAT WE --  
8 WE JUST HAD A PROPOSAL FOR THEM IN FEBRUARY. AND  
9 SO I THOUGHT I SAW A PROPOSAL FOR THEM IN  
10 FEBRUARY.

11 SO IF WE HAD A PROPOSAL FOR THEM IN  
12 FEBRUARY THAT WAS -- THAT WAS -- IT WOULD BE  
13 IMPOSSIBLE TO GET DELIVERY OF THEM IN FEBRUARY.

14 AND I KNOW IT TOOK --

15 (SPEAKING SIMULTANEOUSLY.)

16 BY MR. RICHARDS:

17 Q. RIGHT. YOU PAID -- YOU PAID THE  
18 FIRST PAYMENT, 56,400, THE NEXT DAY AFTER YOU  
19 SIGNED THIS -- THIS CONTRACT, PURSUANT TO YOUR  
20 RECORDS.

21 A. AND THAT'S -- THAT'S WHEN THEY  
22 START. THEY DON'T -- THEY DON'T BEGIN UNTIL  
23 THEY -- UNTIL THAT.

24 Q. WE'RE ON THE SAME PAGE SO FAR.

25 A. OKAY.

0482

1 Q. THEN ON MARCH 5TH, YOU MADE THE  
2 SECOND PAYMENT. THAT'S WHAT I'M TRYING TO TELL  
3 YOU.

4 A. NO. I UNDERSTAND.  
5 SO ALL I'M SAYING IS IT MAKES MORE

6 SENSE FOR IT TO BE LATE MARCH, BECAUSE THE FIRST  
7 PAYMENT IS WHEN THEY -- THEY DON'T START UNTIL YOU  
8 MAKE THE FIRST PAYMENT.

9 SO IF YOU DO THAT ON THE 15TH, IT  
10 WOULD BE IMPOSSIBLE. IT WOULD BE VERY DIFFICULT  
11 TO GET DELIVERY ANY TIME IN FEBRUARY.

12 SO WE MAKE THE SECOND PAYMENT,  
13 WHICH IS A PROGRESS PAYMENT, ON MARCH 5TH. AND WE  
14 MAKE THE FINAL PAYMENT WHEN THEY'RE DONE, WHICH  
15 WOULD BE LATER MARCH. THAT'S ALL I'M SAYING. AND  
16 I --

17 Q. RIGHT. AND THEY -- WELL, THEY SAID  
18 IN THE AGREEMENT THAT THEIR TARGET DATE IS  
19 MARCH 10TH.

20 A. OKAY.

21 Q. SO SITTING HERE TODAY, DO YOU HAVE  
22 ANY RECOLLECTION THAT THEY BREACHED THE TARGET  
23 DATE?

24 A. I REMEMBER IT TAKING LONGER, BUT  
25 I DON'T -- YOU COULD SAY MARCH 10TH, AND I'M NOT

0483

1 GOING TO -- IT DOESN'T MATTER TO ME.

2 Q. DO YOU REMEMBER HOW MUCH LONGER?

3 A. I DON'T KNOW.

4 Q. LIKE A WEEK LONGER?

5 A. I DON'T KNOW.

6 Q. OKAY. BUT IT WOULDN'T BE, LIKE --  
7 LIKE -- WOULD IT BE OVER A WEEK? OVER TWO WEEKS?

8 A. I DON'T KNOW. I DON'T KNOW.

9 Q. WOULDN'T YOU BE UPSET, THOUGH, IF  
10 YOU PAID 56,000 -- 45,000 DOLLARS ON MARCH AND IT  
11 WASN'T DELIVERED ON TIME?

12 MS. CROWTHER: OBJECTION. CALLS  
13 FOR SPECULATION.

14 THE DEPONENT: UNFORTUNATELY, THESE  
15 THINGS TEND TO TAKE LONGER THAN ORIGINALLY  
16 ANTICIPATED.

17 BY MR. RICHARDS:

18 Q. ALL RIGHT. BUT YOU DON'T HAVE ANY  
19 REASON TO BELIEVE THAT YOU DIDN'T RECEIVE THE FED  
20 EX'S AS THEY BILLED YOU FOR AND YOU PAID PRIOR --  
21 AROUND MARCH 24TH, AT THE LATEST, OF '03? YOU  
22 DON'T HAVE ANY REASON TO BELIEVE YOU DIDN'T  
23 RECEIVE THEM AT THAT TIME?

24 A. NO.

25 Q. OKAY. LET ME GO OVER SOME OTHER

0484

1 DOCUMENTS WITH YOU.

2 DID I LEAVE -- LET ME GET MY FILES.

3 OKAY. I'M GOING TO SHOW YOU 3 --

4 336, KJ 336.  
5 KEN -- PHIL KENNER SENT YOU AN  
6 E-MAIL SAYING:  
7 "GOOD. I DO NOT WANT ONE OF THE  
8 TRIPLETS TO RIDE YOUR ASS OR MINE  
9 ABOUT IT."  
10 WHO'S ONE OF THE TRIPLETS?  
11 A. I HAVE NO IDEA.  
12 Q. YOU HAVE NO IDEA WHAT THAT MEANS?  
13 A. NO.  
14 Q. OH. ALL RIGHT.  
15 OKAY. ALL RIGHT. I'M SHOWING YOU  
16 AN ADVANTAGE CREDIT REPORT TO KENNY JOWDY THAT WAS  
17 PROVIDED FOR YOU, WITH A F.I.C.A. SCORE OF 713.  
18 DOES THAT LOOK LIKE A COPY OF YOUR  
19 CREDIT REPORT?  
20 MS. CROWTHER: BATES NUMBER,  
21 PLEASE.  
22 MR. RICHARDS: OH, SORRY. 344.  
23 THE DEPONENT: ACTUALLY, IT'S NOT.  
24 BY MR. RICHARDS:  
25 Q. IT'S NOT YOUR CREDIT REPORT?  
0485  
1 A. NO.  
2 Q. WHAT IS IT?  
3 A. I DON'T KNOW. I DON'T KNOW HOW  
4 THAT WAS MIXED UP. AND I SAID AT THE TIME, AND  
5 IT'S GOT -- IT DOESN'T HAVE MY SOCIAL SECURITY  
6 NUMBER ON IT.  
7 Q. BUT THIS IS NOT YOUR SOCIAL  
8 SECURITY NUMBER?  
9 A. NO.  
10 Q. WHAT IS YOUR SOCIAL SECURITY  
11 NUMBER?  
12 MS. CROWTHER: OBJECTION.  
13 RELEVANCE.  
14 MR. RICHARDS: WELL, HE SAID --  
15 MS. CROWTHER: YEAH. HE SAID IT'S  
16 NOT.  
17 MR. RICHARDS: WELL, I DON'T HAVE  
18 TO TAKE HIS WORD FOR IT.  
19 MS. CROWTHER: HE DOESN'T HAVE TO  
20 GIVE YOU HIS SOCIAL SECURITY NUMBER. THAT'S  
21 PRIVATE.  
22 MR. RICHARDS: SO YOU'RE GOING TO  
23 INSTRUCT HIM NOT TO ANSWER?  
24 MS. CROWTHER: I AM.  
25 IF YOU CAN TELL ME WHY YOU NEED HIS  
0486  
1 SOCIAL SECURITY NUMBER, THAT'S FINE.

2 MR. RICHARDS: TO VERIFY -- WELL,  
3 THIS IS A CREDIT REPORT THAT WAS SUBMITTED TO A  
4 LENDER AND RELATED TO THIS CASE, AND HE'S CLAIMING  
5 IT'S NOT HIS.

6 IF HE HAS MORE THAN ONE SOCIAL, I  
7 JUST WANT TO VERIFY THE SOCIAL. IF YOU WANT TO  
8 STIPULATE TO A PROTECTIVE ORDER ON THE SOCIAL, I  
9 WILL.

10 MS. CROWTHER: NO. I DON'T THINK  
11 YOU'VE LAID ANY FOUNDATION THAT THIS WAS SUBMITTED  
12 TO ANYONE -- AND I DON'T THINK THAT YOU -- DO YOU  
13 HAVE MORE THAN ONE SOCIAL SECURITY NUMBER, KEN?

14 THE DEPONENT: NO.  
15 BY MR. RICHARDS:

16 Q. OKAY. THERE'S A DEROGATORY  
17 ACCOUNTING HERE FOR WOLF MANAGEMENT LEASING FOR  
18 129,000 DOLLARS.

19 DO YOU KNOW WHAT THAT'S ABOUT?

20 A. NO.

21 Q. DO YOU KNOW WHO WOLF MANAGEMENT  
22 LEASING IS?

23 A. I DON'T RECALL.

24 Q. OKAY. THIS IS BATES 349. YOU  
25 STATE, "MY CREDIT REPORT," AND THEN YOU -- YOU

0487

1 PROVIDE -- YOU PROVIDE THE CREDIT REPORT.

2 AND THEN ROB BURDICK SENDS YOU AN  
3 E-MAIL SAYING THAT HE'S RESERVED A ROOM FOR YOU  
4 WITH TWO KING-SIZED BEDS.

5 WHAT IS THIS FOR?

6 MS. CROWTHER: YOU KNOW, IT'S HARD  
7 BECAUSE YOU HAVE THEM ON THE SCREEN. I CAN'T TELL  
8 IF THIS IS ACTUALLY ATTACHED TO THE CREDIT REPORT  
9 WE JUST SAW OR NOT.

10 MR. RICHARDS: NO. IT'S A NEW  
11 E-MAIL.

12 MS. CROWTHER: OKAY. SO THOSE  
13 QUESTIONS YOU WERE ASKING ABOUT THE CREDIT REPORT  
14 BEFOREHAND, THEY DON'T HAVE ANYTHING TO DO WITH  
15 THE ROB BURDICK E-MAIL?

16 MR. RICHARDS: CORRECT.

17 MS. CROWTHER: OKAY. SO ARE YOU  
18 ASKING ABOUT THE ROB BURDICK E-MAIL OR THE CREDIT  
19 REPORT?

20 MR. RICHARDS: THE ROB BURDICK  
21 E-MAIL.

22 MS. CROWTHER: AND THAT'S BATES  
23 NUMBER?

24 MR. RICHARDS: 350.

25 MS. CROWTHER: OKAY.

0488

1 THE DEPONENT: SOUNDS LIKE HE'S  
2 TALKING ABOUT A FESTIVAL IN EL ROSARIO.  
3 BY MR. RICHARDS:  
4 Q. DID IT EVER TAKE PLACE?  
5 A. I BELIEVE SO.  
6 Q. OKAY. NOW, I'M ASKING ABOUT THE  
7 CREDIT REPORTS, 352.  
8 YOU SAY:  
9 "IT PRETTY MUCH TELLS YOU HOW  
10 MANY DAYS I WAS LATE FOR SCHOOL MY  
11 SENIOR YEAR. ANYWAY, THE ONLY SCORE  
12 IT HAD ON THERE WAS FROM EXPERIAN.  
13 HOW THEY GOT IT, I DON'T KNOW. CAN  
14 THEY PULL UP MARK'S?"  
15 WHY DID YOU WANT THEM TO PULL UP  
16 MARK'S?  
17 A. MARK ENDED UP BEING THE ONE -- I  
18 WASN'T ON THE -- I'M NOT ON THE LOAN. I ENDED UP  
19 NOT BEING ON THE LOAN. MARK ENDED UP BEING ON THE  
20 LOAN FOR THE HOUSE IN LAS VEGAS.  
21 Q. DID YOU HAVE -- WHY? DO YOU HAVE  
22 BAD CREDIT?  
23 A. I DON'T KNOW -- I DON'T KNOW WHAT  
24 MY CREDIT WAS. IT WASN'T GOOD ENOUGH TO BE ON THE  
25 LOAN AT THAT TIME.

0489

1 Q. IS IT BETTER NOW?  
2 A. I DON'T KNOW.  
3 Q. BATES 353. YOU SENT A LETTER TO --  
4 AN E-MAIL TO PHIL KENNER.  
5 "DO WE TAKE CARE OF EVERYTHING  
6 SO THE FUNDING CAN HAPPEN MONDAY  
7 MORNING?"  
8 WHAT ARE YOU REFERRING TO, WHICH  
9 FUNDING?  
10 A. I'M SURE AT THAT TIME -- AGAIN,  
11 IT'S JULY OF '05. IT WAS A SCRAMBLE TO KEEP THE  
12 CABO DEAL GOING.  
13 PHIL HAD A LOT OF MONEY THAT WAS  
14 IN -- THAT WAS HARD MONEY. AND ALL I WAS TRYING  
15 TO DO WITH THE SELLER, WHO WAS 89 YEARS OLD AT THE  
16 TIME, WAS TO KEEP HIM ENGAGED SO THAT WE CAN GET  
17 TO CLOSING AND THE MONEY WOULDN'T BE LOST.  
18 Q. OKAY. ON 354, THERE'S -- THERE'S  
19 E-MAILS THAT YOU PROVIDED FROM A WJIN 1434.  
20 DO YOU KNOW WHO THAT IS?  
21 A. BILL NAJAM.  
22 Q. OKAY. AND IT SAYS:  
23 "GUYS, PLEASE FILL OUT THE 1003

24 RESIDENTIAL APPLICATION FORM. IT'S  
25 THE FORM MOST LENDERS ARE FAMILIAR

0490

1 WITH."

2 WHAT IS THAT REFERRING TO?

3 A. I ASSUME IT'S A FORM FOR A LENDER.

4 Q. WELL, WERE YOU TRYING TO BUY A  
5 DIFFERENT RESIDENTIAL PROPERTY?

6 A. NO. AT THIS TIME, WHEN WE WERE  
7 STILL TRYING TO WORK -- GET FUNDING FOR THE  
8 EL ROSARIO PROJECT, OR PHIL WAS TRYING TO GET  
9 FUNDING FOR THE HAWAII PROJECT.

10 Q. ON BATES 356, YOU SENT AN E-MAIL TO  
11 PHIL KENNER STATING THAT YOU LOOKED AT THE REPORT.  
12 IT HAS YOUR NAME AND ALL OF YOUR INFO, BUT MARK'S  
13 SOCIAL SECURITY NUMBER AND HIS BIRTHDAY.

14 AND DO -- DID YOU AND MARK EVER  
15 SWITCH SOCIAL SECURITY NUMBERS?

16 A. NO.

17 Q. SO ULTIMATELY ON THAT PROPERTY,  
18 ONLY MARK IS ON THE -- HE'S THE ONLY GUY ON THE  
19 LOAN?

20 A. I BELIEVE SO, YES.

21 Q. AND WHO OWNS THE PROPERTY?

22 MS. CROWTHER: WE DID THIS  
23 YESTERDAY. ASKED AND ANSWERED.

24 MR. RICHARDS: HE DIDN'T STATE THE  
25 NAME OF WHO OWNS THE PROPERTY.

0491

1 MS. CROWTHER: YES, HE DID. HE  
2 SAID IT WAS ONE-THIRD HIM, ONE-THIRD MARK, ONE --

3 MR. RICHARDS: NOW I'M ASKING THE  
4 TITLE, WHO'S THE TITLE. THAT'S WHAT I MEANT.

5 MS. CROWTHER: HE SAID THAT  
6 YESTERDAY, TOO. HE SAID IT'S HIM AND  
7 MARK THALMANN.

8 MR. RICHARDS: OH, ALL RIGHT.

9 BY MR. RICHARDS:

10 Q. OKAY. I'M GOING TO SHOW YOU NEXT,  
11 IT'S GOING TO BE KJ 430.

12 YOU STATE THAT -- THIS IS AN E-MAIL  
13 TO FERNANDO GARCIA. IF YOU CAN TAKE A LOOK AT  
14 THAT.

15 IS THAT RELATED TO THE MORTGAGE  
16 THAT YOU'RE TRYING TO CLOSE?

17 A. NO. IT'S RELATED TO THE CABO  
18 PROPERTY.

19 Q. ALL RIGHT. NOW I'M SHOWING YOU  
20 431. IT'S A CLOSING STATEMENT TO BIG ISLE 4  
21 VENTURES, L.L.C., FOR 3 MILLION DOLLARS.

22 DO YOU KNOW WHAT THAT'S ABOUT?

23 A. I BELIEVE THAT WAS A HARD MONEY  
24 LOAN THAT PHIL TOOK OUT ON A PIECE OF PROPERTY  
25 THAT HE OWNED IN HAWAII.

0492

1 Q. AND DO YOU KNOW WHY -- WHY HE'S  
2 PROVIDING YOU THAT CLOSING STATEMENT?

3 A. AT THAT TIME, I DO.

4 Q. OKAY. TELL ME WHY.

5 A. AGAIN, AS I SAID, WE WERE UNDER A  
6 LOT OF PRESSURE TO GET THE HARD MONEY DEPOSIT TO  
7 WHERE IT WAS SUPPOSED TO BE, WITH THE SELLER, IN  
8 CABO.

9 IT TOOK -- THERE WERE A LOT OF  
10 PROMISES THAT WERE NOT REALIZED, AND HE WAS LOSING  
11 CONFIDENCE IN OUR ABILITY TO AT LEAST GET THAT  
12 PORTION OF THE DEAL DONE.

13 SO WHEN I NEEDED TO GET MORE TIME,  
14 BECAUSE PHIL WASN'T ABLE TO GET THE MONEY AS  
15 PROMISED, HE SENT ME THIS AS SOME EVIDENCE THAT IT  
16 WAS GOING TO GET DONE SO I CAN AT LEAST SHOW THE  
17 SELLER SOMETHING.

18 Q. OKAY. I'M GOING TO SHOW YOU NEXT  
19 492. THIS IS AN E-MAIL DATED JULY 21ST, 2005,  
20 AT -- FROM 5:15 IN THE MORNING.

21 DO YOU NORMALLY GET UP THAT EARLY?

22 A. UNFORTUNATELY.

23 Q. IT SAYS:

24 "NOT HAPPENING YET. I AM  
25 WAITING FOR FUNDING SOLUTIONS TO GET

0493

1 ME THE LIST OF WHAT THEY NEED AND  
2 THEN CAN GO FROM THERE."

3 IS THIS --

4 MS. CROWTHER: THAT'S NOT ALL. IT  
5 SAYS, "THEN WE CAN GO TO WORK."  
6 BY MR. RICHARDS:

7 Q. YEAH. THEN WE -- THEN WE CAN GO  
8 TO -- MY QUESTION IS: IS THIS DEALING WITH THE  
9 RODNEY DALTON DEAL STILL?

10 A. IT SOUNDS LIKE -- LOOKS LIKE I  
11 TALKED TO RODNEY.

12 Q. YEAH.

13 A. SO SOME OF THAT WAS. AND IT WAS  
14 DEALING WITH THREE OR FOUR THINGS.

15 Q. OKAY. AND WHAT ABOUT -- THIS IS  
16 493.

17 ISN'T IT TRUE THAT, BY THE WAY,  
18 RODNEY COULD ONLY FUND DEALS OUTSIDE OF THE UNITED  
19 STATES?



20 A. THAT'S WHAT I WAS TOLD.  
21 Q. ALL RIGHT. THE -- WHO'S  
22 JOHN PLUNKETT?  
23 A. I BELIEVE HE WORKED FOR ANOTHER  
24 LENDER.  
25 Q. OKAY. ON 494, IT STATES THAT:  
0494  
1 "KENNY IS PAYING THE TICKETS.  
2 IT COSTS 5,000. BE THERE SUNDAY  
3 NIGHT. WANTS TO MEET WITH PHIL  
4 MONDAY MORNING. HE SAID HE WOULD PAY  
5 FOR THE ATTORNEY OUT OF THE 15 YOU  
6 NEED TO PAY HIM. HE MAY NOT BE ABLE  
7 TO MEET WITH PHIL'S LOCAL ATTORNEY."  
8 WHAT DEAL WAS THIS FOR?  
9 A. I DON'T KNOW.  
10 Q. OKAY. THIS IS 495.  
11 APPARENTLY YOU THREATENED SOMEONE  
12 WITH A LAWSUIT, AND THEY TOLD YOU THEY WEREN'T  
13 AFRAID OF YOU THREATENING THEM.  
14 WHAT IS THIS REFERRING TO?  
15 MS. CROWTHER: CAN YOU SCROLL DOWN  
16 SO THAT WE CAN SEE THE E-MAIL THAT PRECEDES IT ON  
17 THE SAME PAGE?  
18 MR. RICHARDS: SURE.  
19 THE DEPONENT: I BELIEVE PHIL HAD  
20 SEVERAL HUNDRED THOUSAND DOLLARS OF HIS MONEY WITH  
21 THIS HARD MONEY LENDER AS A COMMITMENT FEE,  
22 QUOTE/UNQUOTE, MOSTLY FOR THE HAWAII PROJECT, BUT  
23 I THINK WE DID -- WE DID ATTEMPT TO DO SOMETHING  
24 IN MEXICO ALSO.  
25 AND WHEN HE DIDN'T COME THROUGH  
0495  
1 WHEN HE WAS SUPPOSED TO, HE WAS GOING TO KEEP THE  
2 FEES THAT PHIL HAD INVESTED WITH HIM.  
3 AND IT LOOKS LIKE I WAS EITHER  
4 TRYING TO MAKE THE THING GO FORWARD OR HAVE PHIL'S  
5 MONEY SENT BACK TO HIM.  
6 BY MR. RICHARDS:  
7 Q. DID KEN MICKENS INTRODUCE YOU TO  
8 THE K.S.I. PEOPLE?  
9 A. YES.  
10 Q. AND WHO'S KEN MICKENS?  
11 A. HE'S A BROKER.  
12 Q. NOW, YOU MENTIONED -- YOU MENTIONED  
13 THAT -- YOU TESTIFIED EARLIER THAT YOU HAVE TO  
14 SPEND EVERY DAY DEALING WITH THIS LAWSUIT.  
15 DO YOU REMEMBER THAT TESTIMONY?  
16 A. WHEN I'M IN CABO, IT COMES UP  
17 DAILY.

18 Q. OKAY. CAN YOU ELABORATE ON WHAT  
19 YOU MEAN BY THAT?

20 A. EITHER PEOPLE DIRECTLY ASK ME,  
21 PEOPLE THAT ARE INTERESTED IN A PROPERTY -- IT  
22 SEEMS THAT EVERYBODY KNOWS ABOUT WHAT THIS LAWSUIT  
23 IS.

24 UNFORTUNATELY, THEY DON'T KNOW THE  
25 TRUTH, SO THAT'S WHAT I NEED TO TALK TO THEM

0496

1 ABOUT.

2 BUT THEY HAVE A QUESTION AS TO WHAT  
3 THE VALIDITY OF THE LAWSUIT IS AND WHAT THE STATUS  
4 IS AND WHEN I THINK IT'S GOING TO BE RESOLVED  
5 BECAUSE IT AFFECTS PEOPLE'S DECISIONS, I BELIEVE,  
6 ON WHETHER OR NOT THEY WANT TO PURCHASE.

7 Q. WELL, JUST SO YOU'RE CLEAR, WE  
8 HAPPEN TO BELIEVE THE GENERAL ALLEGATIONS OF THIS  
9 LAWSUIT ARE TRUE.

10 BUT NOTWITHSTANDING THAT, AND  
11 NOTWITHSTANDING YOUR JUST GENERAL DENIAL WITHOUT  
12 ANY EVIDENCE SO FAR, WHAT -- CAN YOU TELL ME  
13 SPECIFICALLY --

14 A. IF I CAN MAKE A COMMENT.

15 Q. YEAH. COMMENT.

16 A. IF YOU WENT FROM YOUR -- IF YOU --  
17 IF YOU STARTED WITH YOUR LAST -- WHAT YOU PUT IN  
18 YOUR SECOND AMENDED COMPLAINT, IT WOULDN'T HAVE  
19 BEEN NEWSWORTHY AND WE COULD HAVE -- WE COULD HAVE  
20 HAD A LEGAL INTERACTION, I WOULD SUPPOSE.

21 WHETHER YOU THINK THEY'RE TRUE OR  
22 NOT, I THINK I WENT THROUGH ENOUGH AND SHOWED YOU  
23 HOW THEY'RE NOT TRUE. AND I'LL GO THROUGH AGAIN  
24 AND SHOW YOU HOW EACH STIPULATION OR EACH  
25 PARAGRAPH IN THAT IS NOT TRUE OR, FOR THE MOST

0497

1 PART, IS NOT TRUE.

2 BUT WHEN YOU STARTED WITH SUCH A  
3 SENSATIONAL, COMPLETELY FALSE, ACCUSATIONS AGAINST  
4 ME, THAT'S WHAT THEY TALK ABOUT.

5 IT'S HARD FOR ME TO GET INTO DETAIL  
6 AND SAY, "WELL, THOSE TWO CASES HAVE BEEN THROWN  
7 OUT. NOW I'M DEALING WITH A THIRD ONE."

8 I NEED THEM ALL TO BE EXTINGUISHED.  
9 AND I NEED TO DO WHATEVER I NEED TO DO TO GET THAT  
10 REMOVED FROM MY NAME AND NOT ASSOCIATED WITH ME.

11 Q. CAN YOU NAME ONE DEAL THAT YOU'VE  
12 LOST AS A RESULT OF THE LAWSUIT?

13 A. TO PROVE A NEGATIVE?

14 Q. I'M JUST ASKING YOU IF SOMEONE --  
15 IF SOMEONE TOLD YOU -- CAN YOU NAME ANYBODY THAT'S

16 TOLD YOU, "I'M NOT GOING TO INVEST WITH YOU  
17 BECAUSE WE READ YOU WERE BEING SUED"?

18 A. I JUST HAD A CONVERSATION, AND  
19 I'LL -- ON SATURDAY, WITH SOMEONE WHO SAID --

20 Q. WELL, NO. WHO? I CAN'T GET AN  
21 ANONYMOUS PERSON.

22 A. I THINK THE LAST NAME WAS  
23 ROMANOVSKY.

24 Q. WHERE DO THEY LIVE?

25 A. IN CABO SAN LUCAS.

0498

1 Q. OKAY. I BET YOU DON'T HAVE HIS  
2 PHONE NUMBER, DO YOU?

3 A. I DON'T.

4 Q. OKAY. SO THIS WAS JUST LIKE A  
5 CASUAL, LIKE AT THE -- AT THE MERMAIDS?

6 I'M JUST SAYING, YOU SAID -- DID  
7 YOU LOSE A BUSINESS DEAL AS A RESULT OF THIS  
8 LAWSUIT?

9 A. ARE YOU SERIOUS?

10 Q. ABOUT WHAT?

11 A. SERIOUSLY.

12 Q. WHAT DO YOU MEAN, AM I SERIOUS?

13 A. ARE WE GOING TO HAVE AN INTELLIGENT  
14 CONVERSATION --

15 Q. YEAH. BUT YOU'RE SAYING --

16 A. -- BETWEEN A -- PROFESSIONAL?

17 Q. YEAH.

18 A. OKAY. LET'S HAVE IT, THEN.

19 Q. OKAY. GO AHEAD.

20 A. SO WHAT'S YOUR QUESTION?

21 Q. WHAT DID ROMANOVSKY SAY TO YOU?

22 A. HE SAID THAT HE WAS INTERESTED.

23 HE'S CONCERNED ABOUT THE LAWSUIT. AND HE WOULD  
24 PREFER TO WAIT UNTIL IT'S SETTLED.

25 Q. AND WHERE DID THIS CONVERSATION

0499

1 TAKE PLACE?

2 A. AT DIAMANTE CABO SAN LUCAS.

3 Q. AND YOU DON'T HAVE A CONTACT NUMBER  
4 FOR ROMANOVSKY?

5 A. PERSONALLY, NO, I DON'T HAVE IT.

6 Q. I MEAN, WHAT ABOUT AT THE FACILITY?

7 A. I'M SURE THE SALESPERSON -- YOU  
8 WANT TO KNOW HOW IT ACTUALLY HAPPENED?

9 Q. YES.

10 A. HE'S BEEN TO THE COURSE A COUPLE OF  
11 TIMES. THIS IS HOW IT USUALLY HAPPENS.

12 THERE'S INTEREST IN THE PROPERTY.

13 THEY'RE TALKING TO A SALESPERSON.

14 THE SALESPERSON CALLS ME AND SAYS,  
15 "LISTEN, YOU NEED TO TALK TO THESE PEOPLE.  
16 THEY'RE INTERESTED, BUT THEY WANT TO TALK TO YOU  
17 DIRECTLY ABOUT THE LAWSUIT."

18 SO I MET HIM. SAT DOWN. SPENT 30  
19 MINUTES TALKING TO THEM, AND RESOLUTION IS WAIT  
20 UNTIL IT'S SETTLED.

21 Q. BESIDES ROMANOVSKY, IS THERE  
22 ANYBODY ELSE THAT YOU CAN NAME THAT WANTED TO NOT  
23 PURCHASE A -- WHEN YOU SAY -- IS THIS -- WAS THIS  
24 SOMEONE PURCHASING A HOMESITE?

25 A. YES. I MEAN YOU CAN TALK TO --

0500

1 WELL PROBABLY CHRIS SNELL IS PROBABLY THE BIGGEST  
2 BROKER IN CABO.

3 Q. CHRIS SNELL?

4 A. CHRIS SNELL IS PROBABLY THE BIGGEST  
5 BROKER IN CABO.

6 WON'T EVEN ALLOW HIS BROKERS TO  
7 PARTICIPATE IN A BROKER GOLF EVENT BECAUSE OF THE  
8 CLOUD HANGING OVER THIS PROJECT AND DOESN'T WANT  
9 TO INTRODUCE HIS CLIENTS TO THIS PROJECT BECAUSE  
10 OF THE CLOUD HANGING OVER THIS PROJECT.

11 THAT'S WHAT I WAS TOLD. AND HIS  
12 BROKERS DID NOT COME TO OUR EVENT.

13 Q. DO YOU THINK THAT ONE OF THE  
14 REASONS WHY IT COULD BE DIFFICULT TO INVEST IN  
15 THIS PROJECT IS BECAUSE YOU DON'T HAVE A  
16 GUARANTEED SOURCE OF ADDITIONAL FINANCING TO  
17 SERVICE THE 400,000-DOLLAR-PER-MONTH EXPENSES TO  
18 KEEP THE RESORT OPEN?

19 A. I THINK THERE ARE A NUMBER OF  
20 CHALLENGES THAT EVERYBODY FACES TODAY.

21 AND I THINK THAT WE CAN OVERCOME  
22 ALL OF THEM, INCLUDING THIS LAWSUIT. IT JUST  
23 MAKES IT MORE DIFFICULT.

24 SO THERE ARE A NUMBER OF FACTORS,  
25 ALL OF WHICH WE NEED TO OVERCOME AND ALL OF WHICH

0501

1 I THINK WE CAN OVERCOME. AGAIN, INCLUDING THIS.

2 Q. DO YOU -- DO YOU THINK THAT -- DO  
3 YOU THINK THAT YOUR POSITION WITH RESPECT TO THE  
4 PLAYERS' INVESTMENT HAS BEEN REASONABLE WITH  
5 RESPECT TO THE AMOUNT OF TIME IT'S TAKEN TO RETURN  
6 ANY OF THE PROCEEDS?

7 A. I DON'T UNDERSTAND THE QUESTION.

8 Q. WELL, YOU -- SOME OF THESE  
9 INVESTMENTS HAVE BEEN GOING ON FOR OVER SIX YEARS.

10 A. UH-HUH.

11 Q. AND -- AND THERE'S BEEN A LOT OF

12 MONEY THAT'S BEEN SPENT TO FUND THIS PROJECT, BUT  
13 NOBODY EXCEPT PEOPLE THAT YOU'VE -- THAT YOU'RE  
14 FRIENDLY WITH STILL HAVE MADE ANY MONEY OFF THIS  
15 PROJECT, EITHER THROUGH WORKING OR FROM REFERRALS.

16 SO I'M JUST -- I'M JUST ASKING:  
17 WHAT IS -- WHAT IS -- WHAT IS THE REASONABLE  
18 AMOUNT OF TIME PEOPLE SHOULD WAIT TO GET A RETURN  
19 OF THEIR INVESTMENT IN THIS DEAL?

20 MS. CROWTHER: OBJECTION. THAT'S  
21 COMPLETELY VAGUE AND CONCLUSORY. IT ALSO -- YOUR  
22 PREAMBLE TO THAT MISSTATED THE FACTS.

23 AND I -- IF YOU CAN ANSWER THE  
24 QUESTION, GO AHEAD. BUT IT CALLS FOR A LEGAL  
25 CONCLUSION, AMONG OTHER THINGS.

0502

1 THE DEPONENT: WELL, I THINK IT'S A  
2 RIDICULOUS QUESTION, TO BE HONEST.

3 THEY INVESTED IN A REAL ESTATE  
4 DEAL. THE REAL ESTATE IS ONGOING. THE ECONOMY  
5 HASN'T BEEN THE BEST. THEIR INVESTMENT IS STILL  
6 THERE.

7 THEY STILL HAVE AN OPPORTUNITY TO  
8 RECOUP THEIR INVESTMENT. THEY STILL HAVE AN  
9 OPPORTUNITY TO TURN A PROFIT.

10 THEY'VE MADE IT CONSIDERABLY MORE  
11 DIFFICULT FOR THAT TO HAPPEN WITH THEIR ACTIONS,  
12 BUT IT'S A REAL ESTATE INVESTMENT, AND THE  
13 INVESTMENT IS STILL ONGOING.

14 BY MR. RICHARDS:

15 Q. WHERE -- WHERE ARE THE RECORDS KEPT  
16 FOR YOUR MONTHLY -- FOR ALL THE DETAIL FROM THE  
17 DRAWS THAT YOU MADE FROM THE LEHMAN LOAN?

18 A. DANBURY, CONNECTICUT.

19 Q. DO YOU THINK IT'S -- IT'S --  
20 IT'S -- DO YOU THINK THAT IT'S -- THAT PROVIDES  
21 EASY ACCESS FOR PEOPLE THAT YOU KNOW DON'T LIVE IN  
22 DANBURY, CONNECTICUT, TO GET COPIES OF THE  
23 RECORDS?

24 LET ME REPHRASE THE QUESTION. LET  
25 ME WITHDRAW THAT QUESTION.

0503

1 DO YOU -- ARE YOU EVER WILLING TO  
2 PROVIDE A DIGITAL COPY OF THE DIAMANTE CABO SAN  
3 LUCAS RECORDS THAT CAN BE SHIPPED TO YOUR VARIOUS  
4 INVESTORS?

5 A. I WOULD HAVE NO IDEA. I MEAN, THE  
6 ACTUAL RECORDS, WHICH WE DID MAKE AVAILABLE TO  
7 MR. KENNER, WE PUT HIM IN A ROOM FULL -- THIS  
8 SIZE, FULL OF DOCUMENTS.

9 HE SPENT TWO HOURS THERE, WHICH

10 COULD HAVE TAKEN FIVE DAYS TO LOOK THROUGH. HE  
11 SPENT TWO HOURS THERE AND LEFT.

12 THERE ARE THOUSANDS AND THOUSANDS  
13 AND THOUSANDS OF PAGES OF DOCUMENTS, ALL OF WHICH  
14 PEOPLE THAT ARE ENTITLED TO GO SEE ARE WELCOME TO  
15 GO SEE.

16 Q. HAS ANYBODY EVER MADE AN INSPECTION  
17 REQUEST IN THE LAST SIX YEARS, BESIDES THE S.E.C.  
18 OR THE SOUTHERN DISTRICT OF NEW YORK OR  
19 PHIL KENNER, TO GO TO THE DANBURY, CONNECTICUT,  
20 OFFICE THAT YOU'RE AWARE OF?

21 A. THAT THEY REQUESTED TO GO TO THE  
22 DANBURY OFFICE?

23 Q. YEAH. HAS ANYBODY EVER BEEN THERE,  
24 TO THE DANBURY OFFICE, BESIDES PHIL KENNER?

25 A. I DON'T KNOW.

0504

1 Q. OKAY. ISN'T IT TRUE THAT YOU  
2 DIDN'T MAKE THE S.E.C. GO TO THE DANBURY,  
3 CONNECTICUT, OFFICE AND LOOK THROUGH PAPER BOXES  
4 OF RECORDS?

5 A. WE'VE COMPLIED WITH WHAT THEY ASKED  
6 FOR.

7 Q. BUT ISN'T IT TRUE THAT YOU PROVIDED  
8 THEM A COPY OF THE RECORDS IN RESPONSE --  
9 (SPEAKING SIMULTANEOUSLY.)

10 THE DEPONENT: I DON'T KNOW EXACTLY  
11 WHAT WE PROVIDED THEM, NO.  
12 BY MR. RICHARDS:

13 Q. I'M SURE YOU -- ARE YOU SURE -- DO  
14 YOU HAVE ANY KNOWLEDGE AS TO WHETHER OR NOT YOU  
15 JUST SIMPLY TOLD THE S.E.C., "GO TO MY OFFICE IN  
16 DANBURY, CONNECTICUT, AND GO GET THE RECORDS  
17 THERE"?

18 A. I DON'T KNOW WHAT WAS TOLD TO THEM.

19 Q. WHO'S -- WHAT KIND OF OFFICE IS IN  
20 DANBURY, CONNECTICUT?

21 A. A BUSINESS OFFICE.

22 Q. I MEAN, WHO'S OFFICE IS IT?

23 A. BILL NAJAM. PATTY FORMISANO.  
24 ANOTHER BOOKKEEPER. THAT'S IT THAT'S THERE EVERY  
25 DAY.

0505

1 Q. AND ARE YOU -- ARE YOU TESTIFYING  
2 THAT YOUR RECORDS AREN'T KEPT ON A COMPUTER  
3 SOMEWHERE?

4 A. NO.

5 Q. OKAY. WHERE ARE -- WHAT COMPUTER  
6 HOUSES THE RECORDS OF CABO SAN LUCAS?

7 A. I DON'T KNOW.

8 Q. WHERE IS IT LOCATED?  
9 A. IN DANBURY, CONNECTICUT, I WOULD  
10 ASSUME.  
11 Q. OKAY. WELL -- BUT IF YOU NEED TO  
12 PAY A BILL IN CABO SAN LUCAS, YOU DON'T CALL  
13 DANBURY, CONNECTICUT, DO YOU?  
14 A. WHAT BILL ARE YOU TALKING ABOUT?  
15 Q. LIKE YOUR -- THE BILLS TO RUN THE  
16 CURRENT OPERATION.  
17 WHERE DO YOU GET THE CHECKS FOR  
18 THOSE BILLS?  
19 A. SOME FROM DANBURY, CONNECTICUT.  
20 SOME ARE IN CABO.  
21 Q. WELL, WHAT'S IN CABO. LIKE,  
22 SPECIFICALLY, WHAT'S IN CABO?  
23 A. I DON'T UNDERSTAND THE QUESTION.  
24 Q. LET'S SAY YOU NEED SOME MONEY TO  
25 PAY THE GREENSKEEPERS AT THE GOLF COURSE.  
0506  
1 A. OKAY.  
2 Q. WHERE WOULD YOU GET THE MONEY FROM?  
3 LIKE, WHERE DO YOU GET THE CHECKS? WHO DOES THE  
4 PAYROLL CHECKS?  
5 A. THERE'S AN OFFICE IN CABO.  
6 Q. OKAY. AND IS THERE A BOOKKEEPER  
7 THERE?  
8 A. YES.  
9 Q. AND WHAT'S THAT PERSON'S NAME?  
10 A. WELL, THERE IS -- THERE ARE --  
11 GREG CARRAFIELLO IS RESPONSIBLE FOR SIGNING THE  
12 CHECKS.  
13 Q. GREG CARRAFIELLO?  
14 A. YES.  
15 Q. AND WHAT'S HIS BACKGROUND?  
16 A. PERMITTING. PLANNING. HE DOESN'T  
17 DO THE BOOKS THERE. HE SIGNS -- HIM -- HE AND  
18 FERNANDO GARCIA SIGN THE CHECKS.  
19 Q. A LAWYER IS IN CHARGE OF YOUR --  
20 A. NO, I DIDN'T SAY HE'S IN CHARGE. I  
21 SAID THEY SIGN THE CHECKS.  
22 Q. I SEE. OKAY. YOU'RE NOT A SIGNER?  
23 A. ON SOME OF THE ACCOUNTS. NOT ON  
24 ALL OF THE ACCOUNTS.  
25 Q. WHAT ACCOUNT IS THIS THAT SIGNS  
0507  
1 THESE CHECKS FOR --  
2 A. I DON'T KNOW.  
3 Q. WHAT BANK IS IT AT?  
4 A. I DON'T KNOW.  
5 Q. YOU'RE SAYING THAT YOU'RE THE

6 MANAGER OF CABO SAN LUCAS DIAMANTE, AND YOU DON'T  
7 KNOW WHERE YOUR BANK IS?

8 A. I DON'T KNOW WHICH BANK IT IS, NO.

9 Q. DO YOU KNOW WHICH BANKS YOU USE IN  
10 CABO SAN LUCAS FOR YOUR COMPANY?

11 A. THERE'S A COUPLE, BUT I DON'T KNOW  
12 THEM ALL, NO.

13 Q. SO DO YOU REALIZE HOW HARD IT IS TO  
14 GET RECORDS FROM YOUR INVESTORS IF WE DON'T EVEN  
15 KNOW WHERE YOU BANK?

16 A. NO. THEY'RE ALL IN ONE SPOT THAT  
17 YOU'RE WELCOME TO GO TO. AND IT SAYS -- IF YOU  
18 LOOK AT THE OPERATING AGREEMENTS, IF YOU LOOK AT  
19 THE OFFERING MEMORANDUMS, IT PROVIDES FOR THAT.

20 Q. BUT THERE IS NO OFFERING  
21 MEMORANDUMS FOR CABO SAN LUCAS.

22 A. AN OPERATING AGREEMENT.

23 Q. AND SO IS IT YOUR -- IS IT YOUR  
24 POSITION -- I JUST WANT TO MAKE IT CLEAR FOR THE  
25 RECORD THAT YOU WON'T PROVIDE A COPY ON A C.D,

0508

1 LIKE YOU DID IN THIS CASE, OF ALL THE RECORDS THAT  
2 SHOW HOW THE MONEY'S BEEN SPENT THE LAST FOUR  
3 YEARS?

4 MS. CROWTHER: PROVIDE TO WHOM?

5 MR. RICHARDS: TO ME.

6 MS. CROWTHER: THAT IS FOR ME TO  
7 DECIDE.

8 MR. RICHARDS: TO PROVIDE TO YOUR  
9 INVESTORS.

10 MS. CROWTHER: THE INVESTORS --  
11 WHICH INVESTORS? FOR WHICH COMPANY?

12 BECAUSE YOU REALIZE THE INVESTORS  
13 IN DIAMANTE CABO SAN LUCAS ARE NOT ANY OF THE  
14 NAMED PLAINTIFFS; THAT THOSE PEOPLE INVESTED IN  
15 C.S.L. PROPERTIES, MR. KENNER'S COMPANIES.  
16 BY MR. RICHARDS:

17 Q. C.S.L. PROPERTIES IS A -- IS A --  
18 IS AN OWNER OF -- OF -- IS A PARTNER IN THIS  
19 DEVELOPMENT; IS THAT CORRECT?

20 MS. CROWTHER: OBJECTION TO THE  
21 TERM "PARTNER."

22 BY MR. RICHARDS:

23 Q. THEY HAVE AN OWNERSHIP INTEREST  
24 WITH YOU?

25 A. YES.

0509

1 Q. AND YOU'RE AWARE THAT MR. KENNER  
2 REPRESENTS SOME OF THE PEOPLE THAT INVESTED -- OR  
3 YOU'RE AWARE NOW, OR YOU BECAME AWARE THAT THEIR



4 MONEY, AS YOU -- AS YOU MENTIONED WHEN YOU  
5 TESTIFIED YESTERDAY, WAS USED TO ASSIST IN -- WAS  
6 THE CAPITAL THAT MADE UP THE INITIAL INVESTMENT  
7 PRIOR TO THE LEHMAN BROTHERS LOAN; CORRECT?

8 A. SOME OF IT.

9 Q. AND?

10 THE VIDEOGRAPHER: PARDON ME,  
11 COUNSEL. I'M SORRY. WE HAVE APPROXIMATELY FIVE  
12 MINUTE LEFT ON THIS PARTICULAR TAPE.

13 MR. RICHARDS: ALL RIGHT. AND -- I  
14 WANT YOU TO GET LONGER TAPES NEXT TIME.  
15 BY MR. RICHARDS:

16 Q. THE -- THE -- IS THERE -- WHAT IS  
17 THE DIFFICULTY IN PROVIDING C.S.L. PROPERTIES A  
18 DIGITAL OR SCANNED COPY OF YOUR RECORDS?

19 A. I'M SURE WE PROVIDE WHATEVER EACH  
20 MEMBER IS ENTITLED TO ACCORDING TO THE DOCUMENTS.  
21 AND I'M NOT ENTITLED TO SAY WHAT  
22 THAT IS OR ISN'T, BUT I'M SURE WE WILL.

23 Q. BUT LET'S SAY THE DOCUMENTS HAVE A  
24 PROVISION IN THERE THAT IN 2010 IT'S SIMPLY  
25 UNREASONABLE TO HAVE PEOPLE FLY TO DANBURY,

0510

1 CONNECTICUT, AND SIT IN THE OFFICE FOR FIVE DAYS  
2 AND GO THROUGH PAPER RECORDS.

3 LET'S JUST SAY THEY DON'T WANT TO  
4 DO THAT MUCH WORK. AND THEY JUST WANT A COPY OF  
5 HOW THEIR MONEY HAS BEEN SPENT ON A COMPANY THAT  
6 THEY OWN A PART OF THROUGH ONE GLOBAL ENTITY.

7 IS THERE A REASON WHY YOU JUST  
8 WON'T PROVIDE DIGITAL RECORDS?

9 A. THERE'S A REASON WHY I WANT TO  
10 STICK TO WHAT THE DOCUMENTS SAY I NEED TO DO, YES.

11 Q. AND WHAT'S THE REASON?

12 A. BECAUSE I DON'T THINK ANY  
13 PURPOSE -- THAT THAT GENTLEMAN THERE OVER THE LAST  
14 YEAR AND A HALF HAS DONE ANYTHING WITH ANY  
15 INFORMATION AND TWISTED IT IN ANY WAY HE CAN TO  
16 HURT ME PERSONALLY AND THE COMPANY ITSELF.

17 AND HE CAN TAKE COMPLETELY  
18 LEGITIMATE BOOKS AND RECORDS AND TWIST THEM ANY  
19 WAY HE CAN TO HIS BENEFIT.

20 AND IF I'M LEGALLY SUPPOSED TO GIVE  
21 HIM ACCESS TO THAT, WHICH WE WERE, WE WILL.

22 BUT TO GIVE HIM OTHER INFORMATION,  
23 IT'S THE SAME AS ME GIVING SOMEONE'S PHONE NUMBER,  
24 WHICH I WILL IF I HAVE IT. AND IF I DON'T, I  
25 WON'T.

0511

1

AND I'D RATHER NOT GIVE IT EITHER

2 WAY BECAUSE I DON'T KNOW IF HE'S GOING TO CALL HIM  
3 AND SAY SOMETHING TERRIBLE ABOUT ME.

4 AND I'M SORRY IF IT'S GOTTEN TO  
5 THAT POINT, BUT THAT'S WHERE WE'RE AT.

6 SO IF THE DOCUMENTS SAY I NEED TO  
7 DO IT, THEN I'LL DO IT.

8 Q. WELL, THE -- IF YOUR RECORDS --  
9 WHAT I'M JUST TRYING TO FIND OUT, IF YOUR RECORDS  
10 ARE ORIGINALLY KEPT ON ELECTRONIC FORMAT AND THEN  
11 THESE DOCUMENTS ARE PRINTED OUT TO JUST KEEP IN A  
12 BOX, WE'RE ENTITLED NOW UNDER THE LAW TO GET THEM  
13 IN ELECTRONIC FORMAT.

14 MS. CROWTHER: OBJECTION. YOU'RE  
15 MISCHARACTERIZING THE LAW.

16 AND I TOLD YOU BEFORE, THAT IF YOU  
17 WANT TO TALK ABOUT DISCOVERY ISSUES, YOU TALK WITH  
18 ME.

19 IF YOU WANT TO TALK ABOUT WHAT  
20 HE'LL PROVIDE AS A MANAGING MEMBER, YOU TALK WITH  
21 HIM.

22 BY MR. RICHARDS:

23 Q. WELL, WHEN YOU GO TO THE DANBURY,  
24 CONNECTICUT, OFFICE, ARE THE -- WOULD YOU PROVIDE  
25 RECORDS ALREADY -- THAT ARE ON THE COMPUTERS THAT

0512  
1 THEY'RE STORED IN?

2 A. I HAVE NO IDEA WHAT'S ON THE  
3 COMPUTER AND WHAT'S NOT ON THE COMPUTER.

4 Q. WHO WOULD KNOW WHAT'S ON THE  
5 COMPUTER AND WHAT'S NOT ON THE COMPUTER? WHO  
6 WOULD BE THE PERSON THAT IS THE CUSTODIAN OF THOSE  
7 RECORDS?

8 A. I WOULD SAY PATTY FORMISANO.

9 Q. AND WHERE IS SHE LOCATED?

10 A. IN DANBURY.

11 Q. AND WHAT'S HER TITLE WITH THE  
12 COMPANY?

13 A. CONTROLLER.

14 Q. AND DOES SHE GET PAID A SALARY  
15 EVERY YEAR FROM DIAMANTE CABO SAN LUCAS?

16 A. SHE GETS -- YES.

17 Q. AND HOW DO YOU SPELL FORMISANO?

18 A. F-O-R-M-I-S-A-N-O.

19 Q. AND HOW LONG HAS SHE WORKED FOR YOU  
20 FOR?

21 A. I DON'T KNOW. APPROXIMATELY THREE  
22 YEARS.

23 Q. DID SHE EVER HAVE A RELATIONSHIP  
24 WITH MASOOD BHATTI PRIOR TO WORKING WITH YOU?

25 A. I DON'T KNOW. THEY'RE FRIENDS.

0513

1 Q. DO YOU KNOW IF THEY DATED?  
2 A. I DON'T KNOW.  
3 Q. HAVE YOU EVER MADE STATEMENTS TO  
4 INDIVIDUALS THAT MR. KENNER STOLE HIS CLIENTS'  
5 MONEY AND BOUGHT A BEACH HOUSE IN CALIFORNIA?  
6 A. NO.  
7 Q. HAVE YOU EVER TOLD ANYONE THAT  
8 MR. KENNER STOLE HIS CLIENTS' MONEY?  
9 A. I DON'T KNOW.  
10 Q. YOU DON'T KNOW?  
11 A. I DON'T BELIEVE SO. I DON'T KNOW.  
12 Q. DO YOU -- DO YOU HAVE ANY EVIDENCE  
13 AT ALL THAT MR. KENNER STOLE HIS CLIENTS' MONEY?  
14 A. I HAVE MY BELIEFS, BUT I DON'T --  
15 Q. I MEAN ANY -- ANY --  
16 (SPEAKING SIMULTANEOUSLY.)  
17 THE DEONENT: I DON'T KNOW.  
18 BY MR. RICHARDS:  
19 Q. BESIDES SPECULATION, DO YOU HAVE  
20 ANY EVIDENCE?  
21 A. I DON'T KNOW.  
22 Q. BY INVESTING -- BY MR. KENNER --  
23 A. I CAN SAY THERE WAS A JUDGMENT  
24 AGAINST HIM FOR TWO -- OVER TWO AND A HALF MILLION  
25 DOLLARS.

0514

1 I DON'T KNOW WHAT'S -- IF THAT'S  
2 EVIDENCE OR NOT OF ANYTHING. BUT HE DOES HAVE A  
3 JUDGMENT AGAINST HIM.  
4 Q. DO YOU KNOW WHAT THE BASIS OF WHY  
5 THE JUDGMENT WAS ENTERED?  
6 A. I DON'T KNOW.  
7 Q. YOU TESTIFIED IN THAT ARBITRATION?  
8 A. YES.  
9 Q. WERE YOU UNDER SUBPOENA, OR DID YOU  
10 VOLUNTARILY TESTIFY?  
11 A. VOLUNTARILY, I BELIEVE.  
12 Q. AND WHY DID YOU VOLUNTARILY  
13 TESTIFY?  
14 A. BECAUSE I WAS ASKED.  
15 Q. BY WHO?  
16 A. MR. MEEKS.  
17 Q. AND WHAT DID MR. MEEKS TELL YOU?  
18 A. NOTHING. I DON'T KNOW.  
19 Q. DID MR. MEEKS PROMISE YOU THAT IF  
20 YOU TESTIFIED IN THAT ARBITRATION, THAT HE WOULD  
21 DROP HIS LAWSUIT AGAINST YOU IN FEDERAL COURT IN  
22 LOS ANGELES?  
23 A. ABSOLUTELY NOT.

24 Q. ONE THING HAD NOTHING TO DO WITH  
25 THE OTHER?

0515

1 A. NO.

2 Q. SO YOU JUST TESTIFIED -- YOU FLEW  
3 ALL THE WAY FROM CABO SAN LUCAS TO ARIZONA JUST  
4 BECAUSE YOU'RE A -- YOU'RE -- YOU DO THAT FOR  
5 PEOPLE?

6 MS. CROWTHER: OBJECTION.  
7 ARGUMENTATIVE.

8 BY MR. RICHARDS:

9 Q. WHAT WAS YOUR MOTIVE, THOUGH, FOR  
10 FLYING OUT TO ARIZONA FROM CABO SAN LUCAS?

11 A. I WAS ASKED TO BE THERE. AND HE  
12 FELT THAT INFORMATION, WHETHER IT'S HELPFUL OR --  
13 WHETHER IT HELPED OR HURT, I WASN'T THERE ON  
14 BEHALF OF ANYONE OTHER THAN TO TELL THE TRUTH.  
15 AND THAT'S WHAT I DID.

16 THE VIDEOGRAPHER: COUNSEL, I NEED  
17 TO CHANGE TAPES.

18 MR. RICHARDS: OKAY.

19 THE VIDEOGRAPHER: AND WE'LL GO OFF  
20 VIDEOTAPE RECORD AT 12:21 P.M. CONCLUDING TAPE  
21 NUMBER 1 OF VOLUME NUMBER II.

22

23 (WHEREUPON, A LUNCHEON RECESS WAS  
24 HELD FROM 12:21 P.M. TO 1:49 P.M.)

25 ///

0516

1 WEST HOLLYWOOD, CALIFORNIA WEDNESDAY  
2 JANUARY 6, 2010  
3 1:49 P.M.

4

5 THE VIDEOGRAPHER: AND GOOD  
6 AFTERNOON. WE'RE BACK ON THE VIDEOTAPE RECORD,  
7 BEGINNING TAPE NUMBER 2 OF VOLUME NUMBER II AT  
8 1:49 P.M.

9

10 EXAMINATION (CONTINUED)

11 BY MR. RICHARDS:

12 Q. ALL RIGHT. I'M GOING TO SHOW YOU  
13 THE OFFERING MEMORANDUM.

14 NOW, WAS IT -- I ACTUALLY HAVE A  
15 COPY HERE THAT'S EASIER FOR YOU TO LOOK AT.

16 MS. CROWTHER: AND WHERE DID --  
17 THIS HAS A JOWDY 001 BATES NUMBER.

18 MR. RICHARDS: YEAH.

19 MS. CROWTHER: I DON'T THINK THAT'S  
20 MINE.

21 MR. RICHARDS: THIS IS MINE. I

22 SCANNED IT AND PUT A COPY OF THE C.D. THAT I'M  
23 MAKING FOR YOU.

24 MS. CROWTHER: OKAY. SO THIS IS  
25 THE -- THIS IS YOUR COPY OF THE DOCUMENT?

0517

1 MR. RICHARDS: YEAH. YOU'RE GOING  
2 TO GET A C.D. WITH ALL YOUR DISCOVERY, PLUS THE  
3 VIDEO, PLUS THIS DOCUMENT.

4 MS. CROWTHER: I JUST WANT TO KNOW  
5 WHERE IT CAME FROM.

6 MR. RICHARDS: I SCANNED IT FROM --  
7 FROM THIS BOOKLET RIGHT HERE. FROM -- THAT WAS --  
8 JUST FROM ONE OF THE BOOKLETS PROVIDED TO  
9 JAY MCKEE. I JUST SCANNED IT FROM THERE.

10 BY MR. RICHARDS:

11 Q. OKAY. NOW, INITIALLY, WHAT WERE  
12 YOU TRYING TO RAISE FROM THIS -- THIS OFFERING, DO  
13 YOU REMEMBER? LIKE HOW MUCH MONEY?

14 A. I BELIEVE -- UP TO 10 MILLION  
15 DOLLARS, I BELIEVE.

16 Q. AND HAD YOU ALREADY ACQUIRED THE  
17 LAND THAT YOU WERE -- IN THE EL ROSARIO?

18 A. THE COMPANY HAS ACQUIRED SOME OF  
19 IT, YES. I'M NOT SURE WHAT PORTION OF IT OR ALL  
20 OF IT AT THAT POINT.

21 Q. OKAY. AND DID YOU -- DID YOU --  
22 HOW MUCH MORE OF THE LAND WERE YOU -- WERE YOU  
23 SUPPOSED TO ACQUIRE PRIOR TO THIS OFFERING? LIKE  
24 HOW MUCH -- WHAT WAS THE BALANCE DUE ON THIS -- ON  
25 THIS LAND?

0518

1 (TELEPHONIC INTERRUPTION.)

2 MR. RICHARDS: SORRY.

3 BY MR. RICHARDS:

4 Q. GO AHEAD.

5 A. I DON'T KNOW. AT THIS TIME I DON'T  
6 KNOW.

7 Q. HOW MUCH DID THE COMPANY ULTIMATELY  
8 RAISE?

9 A. THROUGH THIS OFFERING?

10 Q. YEAH.

11 A. I BELIEVE IN THE NEIGHBORHOOD OF  
12 7 MILLION DOLLARS, I BELIEVE. SOMEWHERE IN THAT  
13 NEIGHBORHOOD. I DON'T KNOW FOR SURE.

14 Q. WHAT WAS THE TOTAL -- THE TOTAL  
15 PRICE OF THE LAND?

16 A. IF YOU ADD UP -- LIKE I SAID, THERE  
17 WAS SEVERAL CONTRACTS, SEVERAL PEOPLE WHO HAD  
18 PROPERTY THERE THAT WE NEEDED TO BUY OUT.

19 IF YOU ADD IT ALL UP, I BELIEVE,

20 I'M NOT SURE, IN THE NEIGHBORHOOD OF 4 MILLION  
21 DOLLARS.

22 Q. THAT WAS THE TOTAL PRICE OF THE  
23 LAND?

24 A. I BELIEVE SO.

25 Q. OKAY.

0519

1 A. I'M NOT SURE.

2 Q. AND WERE YOU AWARE OR NOT WHETHER,  
3 WHEN PEOPLE WERE MAKING THE INVESTMENTS IN THIS  
4 ENTITY, THAT THEY WERE -- WHETHER OR NOT THEY WERE  
5 UNDER THE IMPRESSION THAT YOU'D ALREADY OWNED THE  
6 LAND, AND THERE WAS NO MORE REQUIREMENT NECESSARY  
7 FOR LAND PURCHASES?

8 A. I DON'T KNOW.

9 Q. WHAT WERE YOU -- WHAT WERE YOU  
10 SUPPOSED TO DO WITH THE FUNDS THAT YOU RAISED --  
11 LET ME POINT YOU DOWN HERE TO PAGE 7, BATES STAMP  
12 7, IF YOU COULD LOOK AT HERE.

13 IT SAYS THAT YOU WERE GOING TO  
14 BE -- YOU WERE GOING TO CONTRIBUTE 150,000 IN  
15 CASH TO THE COMPANY, PLUS 2 MILLION 750 IN THE  
16 AGGREGATE PRINCIPAL AMOUNTS OF PROMISSORY  
17 NOTES.

18 DID YOU EVER -- DO YOU HAVE ANY  
19 EVIDENCE THAT YOU EVER CONTRIBUTED THE 150,000  
20 DOLLARS IN CASH?

21 A. I DON'T KNOW. I BELIEVE SO. I  
22 DON'T KNOW.

23 Q. DO YOU -- DO YOU HAVE ANY  
24 RECOLLECTION THAT YOU EVER DID?

25 A. I BELIEVE I DID. I BELIEVE I

0520

1 CONFORMED TO WHAT THE DOCUMENTS SAY. I'M LOOKING  
2 AT IT, SO I ASSUME I DID.

3 Q. NOW, AT SOME POINT LATER ON, DID  
4 YOU REMEMBER HAVING TO SPEND ADDITIONAL MONEY TO  
5 BUY MORE PARCELS TO COMPLETE THIS DEVELOPMENT THAT  
6 CAUSED YOU TO GO OVER THE -- THAT CAUSED YOU TO GO  
7 OVER THE AMOUNTS REPRESENTED IN THE PRIVATE  
8 PLACEMENT MEMORANDUM?

9 A. WHAT AMOUNTS ARE YOU TALKING ABOUT  
10 IN THE PRIVATE PLACEMENT MEMORANDUM?

11 Q. WELL, FOR THE TERM TO GO TO  
12 4 MILLION DOLLARS?

13 A. FOR THE --

14 Q. FOR THE PURCHASE OF THE LAND.

15 A. I SAID THAT WAS AN APPROXIMATE.

16 I'M NOT SURE EXACTLY WHAT IT WAS, AND I DON'T  
17 BELIEVE WE SPENT MORE THAN WE WERE SUPPOSED TO, IF

18 THAT'S THE QUESTION.

19 Q. YEAH. SO WAS 4 MILLION WHAT YOU  
20 INTENDED TO PAY FOR THE LAND?

21 A. I DON'T RECALL. I JUST DON'T THINK  
22 IT WAS MORE THAN WHAT WE -- WHATEVER IT WAS THAT  
23 WE REPRESENTED. I DON'T KNOW.

24 Q. ALL RIGHT. DO YOU REMEMBER  
25 TRANSFERRING 4 MILLION DOLLARS TO LOR MANAGEMENT?

0521

1 A. I DON'T RECALL, NO.

2 Q. AND ARE YOU AWARE OF ANY  
3 INVESTIGATIONS PRESENTLY AGAINST PHILLIP KENNER?

4 A. IN THE UNITED STATES?

5 Q. YES.

6 A. AS IN A FEDERAL INVESTIGATION?

7 Q. ANY INVESTIGATION.

8 A. I'M NOT AWARE, NO.

9 Q. WHAT ABOUT IN MEXICO?

10 A. I'M AWARE THAT PHIL KENNER FILED AN  
11 ACTION AGAINST ME THAT IS NO LONGER ACTIVE. AND  
12 WE ARE PURSUING THE FACT THAT WE BELIEVE HE  
13 PERJURED HIMSELF IN THOSE ACCUSATIONS.

14 Q. YOU MEAN UNDER, LIKE, MEXICAN LAW,  
15 PERJURY?

16 A. WELL, HE PROVIDED FALSE TESTIMONY.

17 Q. WHERE?

18 A. IN MEXICO.

19 Q. OKAY. AND DID YOU EVER -- DID YOU  
20 EVER REPRESENT TO ANY OF THE PLAINTIFFS IN THIS  
21 ACTION THAT YOU HAD ALREADY OWNED THE LAND IN  
22 EL ROSARIO BEFORE THEY INVESTED MONEY?

23 A. I DON'T KNOW -- NAME ME A  
24 PLAINTIFF, AND I'LL TELL YOU IF I'VE EVER EVEN MET  
25 THE PERSON FIRST. AND THEN I CAN SAY WHAT I

0522

1 POSSIBLY COULD HAVE OR COULD NOT HAVE SAID TO HIM.

2 Q. WELL, ANY OF -- YOU TESTIFIED  
3 YESTERDAY THAT YOU MET VARIOUS PLAINTIFFS -- OR TO  
4 MR. KENNER.

5 DID YOU EVER -- DID YOU EVER  
6 REPRESENT TO ANY OF THE PLAINTIFFS THAT -- THE  
7 PARTIES OF THIS ACTION THAT YOU OWNED THE LAND IN  
8 EL ROSARIO PRIOR TO THEM INVESTING?

9 A. AGAIN, BE SPECIFIC WITH THE  
10 PLAINTIFF, AND I CAN TELL YOU FIRST WHETHER I'VE  
11 EVEN TALKED WITH THAT PERSON AND, SECONDLY, WHAT I  
12 MAY OR MAY NOT HAVE REPRESENTED TO THEM.

13 Q. OKAY. WHAT ABOUT JASON WOOLLEY?

14 A. I NEVER TALKED TO JASON WOOLLEY  
15 BEFORE HE INVESTED HIS MONEY.

16 Q. WELL, IF I GIVE YOU THE LIST OF THE  
17 PLAINTIFFS, WHY DON'T YOU TELL ME WHICH ONES YOU  
18 THINK YOU SPOKE TO, RATHER THAN ME GOING THROUGH  
19 EACH ONE.

20 A. POSSIBLY GLEN MURRAY.  
21 RAYMOND MURRAY. POSSIBLY DIMITRI KHRISTICH, BUT I  
22 DON'T RECALL. POSSIBLY BRYAN BERARD.

23 Q. DID YOU --

24 A. AND THAT WOULD BE IT.

25 Q. OKAY. DID YOU HOLD YOURSELF OUT AS

0523

1 THE OWNER OF THE PROPERTY WHEN YOU MET THOSE  
2 INDIVIDUALS?

3 A. IT DEPENDS WHEN I MET THOSE  
4 INDIVIDUALS. THEN I -- IF WE HAD LEGALLY OWNED  
5 THE PROPERTY, THEN I PROBABLY SAID WE DID, THE  
6 COMPANY DID.

7 AND IF THE COMPANY DIDN'T, I'M SURE  
8 I DIDN'T SAY THAT THEY DID.

9 Q. IF THE COMPANY -- IF THE COMPANY --  
10 SO YOU'RE SAYING A DIFFERENT -- WHEN DID THE  
11 COMPANY FINALLY ACQUIRE ALL OF THE PROPERTY?

12 A. THERE WERE SEVERAL -- THERE WERE  
13 SEVERAL CONTRACTS, AND I BELIEVE FROM SEPTEMBER --  
14 AND I DON'T KNOW THE ACTUAL DATES. THAT'S WHY I  
15 DON'T WANT TO SAY ONE WAY OR THE OTHER.

16 BECAUSE FROM SEPTEMBER, I WOULD  
17 THINK, UNTIL DECEMBER, IT WENT FROM LEASEHOLD  
18 INTEREST TO FEE SIMPLE TITLE. AND I'M GUESSING AS  
19 TO WHAT THOSE DATES ARE.

20 THEREFORE, I'D BE GUESSING AS TO  
21 WHETHER OR NOT I WOULD HAVE REPRESENTED TO THE  
22 THREE OR FOUR PEOPLE THAT I MENTIONED, WHO I MAY  
23 HAVE TALKED TO BEFORE THEY INVESTED, AT WHAT TIME  
24 THEY INVESTED WOULD MEAN WHETHER I SAID THAT WE  
25 DID OR WE DIDN'T.

0524

1 Q. ALL RIGHT. I'M GOING TO SHOW YOU  
2 PAGE -- THIS IS MARKED JOWDY 61. THIS IS A COPY  
3 OF YOUR ARTICLES OF YOUR LIMITED LIABILITY  
4 AGREEMENT.

5 ON PAGE -- PARAGRAPH 601 ON  
6 PAGE 61, TAKE A LOOK AT THAT, WHERE IT SAYS,  
7 "GENERAL FIDUCIARY DUTY."

8 A. UH-HUH.

9 Q. IT SAYS THAT:

10 "THE MANAGING MEMBERS SHALL BE  
11 UNDER A FIDUCIARY DUTY TO CONDUCT THE  
12 AFFAIRS OF THE COMPANY IN THE BEST  
13 INTEREST OF THE COMPANY AND OF THE



14 CLASS A MEMBERS, INCLUDING  
15 SAFEKEEPING AND USE OF ALL COMPANY  
16 FUNDS AND ASSETS, WHETHER OR NOT IN  
17 THEIR POSSESSION OR CONTROL.

18 "AND THE MANAGING MEMBERS SHALL  
19 NOT EMPLOY OR PERMIT ANOTHER PARTY TO  
20 EMPLOY SUCH FUNDS AND ASSETS IN ANY  
21 MANNER EXCEPT FOR THE EXCLUSIVE  
22 BENEFIT OF THE COMPANY."

23 YOU -- DO YOU UNDERSTAND THE  
24 CONCEPT OF A FIDUCIARY DUTY?

25 A. I BELIEVE SO.

0525

1 Q. AND AT ANY TIME DO YOU -- DID YOU  
2 OR AT ALL TIMES SINCE YOU'VE BEEN THE MANAGER OF  
3 DIAMANTE DEL MAR, YOU HAVE SAFE -- HAVE YOU  
4 TRANSFERRED ANY OF THE ASSETS OUT OF THAT COMPANY?

5 A. I DON'T BELIEVE SO. I DON'T -- IF  
6 YOU HAVE AN EXAMPLE, YOU CAN GIVE ME AN EXAMPLE.

7 Q. WELL, HAVE YOU EVER -- IT SAYS, THE  
8 LAST SENTENCE:

9 "THE MANAGING MEMBER AND ITS  
10 AFFILIATES SHALL NOT RECEIVE ANY  
11 REMUNERATION FOR ANY SERVICES THEY  
12 MAY PERFORM FOR THE COMPANY OTHER  
13 THAN AS PERMITTED UNDER THIS  
14 AGREEMENT."

15 HAVE YOU EVER RECEIVED ANY PAYMENTS  
16 FROM ANY OF YOUR OTHER ENTITIES THAT YOU OWN OR  
17 CONTROL THAT ARE FOR SERVICES THAT AREN'T  
18 PERMITTED IN THIS AGREEMENT?

19 A. I DON'T BELIEVE SO.

20 Q. HAVE YOU -- WITH RESPECT TO THE  
21 SAFEGUARDING OF THE ASSETS OF THE COMPANY, HAVE  
22 YOU EVER ENCUMBERED ANY OF THE ASSETS OF DIAMANTE  
23 DEL MAR?

24 A. IT HAS A LOAN ON IT, YES.

25 Q. AND WHERE DID THE PROCEEDS FOR THAT

0526

1 LOAN GO?

2 A. TO DIAMANTE DEL MAR.

3 Q. AND WAS THAT -- WAS THAT A LOAN  
4 THAT OCCURRED -- THAT'S A LOAN THAT OCCURRED  
5 AFTER -- AFTER THE INITIAL PURCHASE; IS THAT  
6 CORRECT?

7 A. YES.

8 Q. DID YOU -- WHAT BANK ACCOUNT DID  
9 THE FUNDS GO INTO FOR THAT LOAN?

10 A. DIAMANTE DEL MAR'S.

11 Q. AND HOW DO YOU KNOW THAT?

12 A. I DON'T -- I'M PRETTY CERTAIN IT  
13 DID. I KNOW.

14 Q. NOW, IF YOU TURN TO PAGE 60, WHERE  
15 IT SAYS, "BOOKS AND RECORDS," IT SAYS -- IT SAYS:  
16 "THE BOOKS AND RECORDS OF  
17 THE" -- IT SAYS, "THE BOOKS AND" --  
18 IT SAYS, "THE MANAGING MEMBER SHALL  
19 MAINTAIN COMPLETE AND ACCURATE BOOKS  
20 AND RECORDS OF ALL MATTERS RELATED TO  
21 THE COMPANY, INCLUDING, WITHOUT  
22 LIMITATION, COPIES OF THE COMPANY'S  
23 CERTIFICATE OF FORMATION, THIS  
24 AGREEMENT, ALL AMENDMENTS TO EACH,  
25 AND THE COMPANY'S STATE AND FEDERAL

0527

1 INCOME TAX RETURNS."

2 AND THEN IT SAYS THAT UPON TEN  
3 BUSINESS DAYS' NOTICE, THEY CAN HAVE ACCESS TO THE  
4 BOOKS AND RECORDS AT ANY TIME.

5 SO WHERE -- SINCE YOU'RE THE --  
6 YOU'RE THE ONLY MANAGING MEMBER OF THIS COMPANY;  
7 RIGHT?

8 A. YES.

9 Q. AND THEN I'LL REPRESENT TO YOU,  
10 WHICH I'LL SHOW YOU, THAT IF YOU LOOK ON THE  
11 SCREEN, YOU HAVE THE IDENTICAL -- THE IDENTICAL  
12 CLAUSE. AND THIS IS -- THIS IS THE IDENTICAL  
13 CLAUSE FOR THE CABO SAN LUCAS AGREEMENT.

14 MS. CROWTHER: WHAT WE SEE ON THE  
15 SCREEN IS THE SAME -- OH, YOU'RE CHANGING. OKAY.

16 MR. RICHARDS: OH, NO. THAT'S  
17 DIAMANTE DEL MAR. SORRY.

18 LET ME PULL THE -- ACTUALLY, THAT'S  
19 THE SAME -- I'M SHOWING YOU THE SAME DOCUMENT.  
20 BY MR. RICHARDS:

21 Q. DO YOU -- WHERE -- WHERE IN THE  
22 AGREEMENT DOES -- WHERE IN THE AGREEMENT DOES IT  
23 REQUIRE PEOPLE TO GO TO DANBURY, CONNECTICUT, TO  
24 LOOK AT THE BOOKS AND RECORDS?

25 MS. CROWTHER: OBJECTION. THE

0528

1 DOCUMENT SPEAKS FOR ITSELF. CALLS FOR A LEGAL  
2 CONCLUSION.

3 BY MR. RICHARDS:

4 Q. OKAY. WHERE DO YOU MAINTAIN -- YOU  
5 DON'T HAVE AN OFFICE IN DANBURY, CONNECTICUT, DO  
6 YOU?

7 A. I HAVE A DESK THERE, YES.

8 Q. AND HOW OFTEN HAVE YOU BEEN THERE  
9 IN 2009, DID YOU GO TO DANBURY, CONNECTICUT?

10 A. WELL, I'VE BEEN -- I DON'T KNOW HOW  
11 MANY DAYS.

12 Q. THAT MANY? I MEAN WHY WOULD  
13 ANYBODY GO TO DANBURY, CONNECTICUT, THAT MANY  
14 TIMES?

15 A. IT'S A BEAUTIFUL PLACE.

16 Q. IS THAT WHERE YOU'RE FROM?

17 A. YES, SIR.

18 Q. SO IF YOU -- IF YOU HAD TO DO A  
19 PERCENTAGE, HOW MUCH OF YOUR TIME DO YOU SPEND IN  
20 DANBURY, CONNECTICUT?

21 A. NOT VERY MUCH.

22 Q. AND SO ARE YOU -- ARE YOU  
23 TESTIFYING THAT COPIES OF BOOKS AND RECORDS ARE  
24 NOT -- YOU DON'T HAVE ACCESS TO THEM IN CABO SAN  
25 LUCAS IF YOU WANT TO SEE WHAT NUMBERS YOU'RE

0529  
1 DOING?

2 A. FOR WHAT PROJECT?

3 Q. FOR THE -- FOR THE CABO SAN LUCAS  
4 PROJECT.

5 A. A FULL SET OF RECORDS I BELIEVE IS  
6 IN DANBURY, CONNECTICUT.

7 Q. OKAY. SO IF YOU WANTED TO ACCESS  
8 ALL OF YOUR BOOKS AND RECORDS, HOW WOULD YOU --  
9 HOW WOULD YOU PERSONALLY DO THAT?

10 LIKE, IF YOU -- LET'S SAY YOU, AS  
11 THE MANAGER OF THE COMPANY, SAID, "LOOK, I WANT TO  
12 SEE EXACTLY WHAT OUR EXPENSES WERE IN CABO SAN  
13 LUCAS FOR 2009," WHAT WOULD YOU DO?

14 A. I'D LOOK AT SEVERAL DIFFERENT  
15 SPREADSHEETS, I BELIEVE. IF I WANTED TO SEE WHAT  
16 WE ACTUALLY SPENT, I'D LOOK AT A DRAW REQUEST.

17 Q. AND WHERE WOULD YOU GET THE  
18 SPREADSHEETS FROM?

19 A. I'D CALL THE OFFICE IN CONNECTICUT  
20 AND HAVE THEM E-MAIL IT TO ME OR -- THAT'S  
21 BASICALLY WHAT I WOULD DO.

22 Q. AND WHAT -- WHAT SOFTWARE WOULD THE  
23 E-MAIL COME IN FOR YOU TO LOOK AT? LIKE MICROSOFT  
24 EXCEL?

25 A. IF IT WAS A SPREADSHEET, YES.

0530  
1 Q. OKAY. SO THERE'S SOME -- SO IF  
2 SOMEONE MADE A REQUEST TO LOOK AT THE SPREADSHEET  
3 OF THE EXPENSES, THAT WOULD BE FAIRLY EASY FOR YOU  
4 TO ACCOMMODATE?

5 A. YES.

6 Q. HAS -- IN PREPARING THE DISCOVERY  
7 RESPONSES IN THIS CASE, HAS ANYBODY ASKED YOU TO

8 PREPARE ANY ELECTRONIC RECORDS, LIKE IN THE FORM  
9 OF A SPREADSHEET?

10 MS. CROWTHER: OBJECTION. AND I  
11 INSTRUCT YOU NOT TO ANSWER TO THE EXTENT THAT  
12 INSTRUCTION CAME FROM COUNSEL.

13 IF SOMEBODY ELSE ASKED YOU TO DO  
14 IT, YOU CAN GO AHEAD.

15 BY MR. RICHARDS:

16 Q. IS THAT THE ONLY ONE THAT ASKED YOU  
17 TO DO IT?

18 MS. CROWTHER: WELL, HE'S NOT  
19 SUPPOSED TO DISCLOSE WHETHER I DID OR DIDN'T. SO  
20 IF THERE'S SOMEONE OTHER THAN COUNSEL, HE CAN GIVE  
21 YOU THAT INFORMATION.

22 BY MR. RICHARDS:

23 Q. OKAY. WHERE -- ARE YOU AWARE OR  
24 ARE NOT AWARE OF WHETHER OR NOT YOU MAINTAIN YOUR  
25 BOOKS AND RECORDS IN ELECTRONIC FORMAT? DO YOU

0531

1 KNOW THE ANSWER TO THAT?

2 A. BY "ELECTRONIC FORMAT," DO YOU  
3 MEAN --

4 Q. LIKE IN MICROSOFT EXCEL OR  
5 QUICKBOOKS.

6 A. YES.

7 Q. YOU DO MAINTAIN THEM IN ELECTRONIC  
8 FORMAT?

9 A. YES.

10 Q. OKAY. YOU'RE FAMILIAR WITH HOW  
11 THEY'RE MAINTAINED OR WHAT TYPE OF ELECTRONIC  
12 FORMAT?

13 A. I BELIEVE QUICKBOOKS.

14 Q. OKAY. AND DO YOU KNOW WHERE THAT  
15 DATA -- THE DATA THAT IS USED TO BE PUT INTO THE  
16 QUICKBOOKS PROGRAM, WHERE -- WHAT COMPUTER IS THAT  
17 ENTERED INTO, IF YOU KNOW? LIKE WHAT LOCATION?

18 A. I BELIEVE IN CONNECTICUT.

19 Q. OKAY. ALL RIGHT. I'M GOING TO --  
20 I'M GOING TO SHOW YOU A BALANCE SHEET FOR DIAMANTE  
21 DEL MAR.

22 LET ME PUT THIS ON THE SCREEN.

23 (BRIEF PAUSE IN THE PROCEEDINGS.)

24 BY MR. RICHARDS:

25 Q. ALL RIGHT. THIS IS A BALANCE SHEET

0532

1 THAT'S DATED -- THAT WAS PRINTED OUT ON 12-3-09,  
2 IN THE UPPER LEFT-HAND CORNER, AND IT'S JOWDY  
3 4896.

4 AND IF YOU GO DOWN TO THE BALANCE  
5 SHEET, THERE'S SOME NOTES -- THERE'S 4 MILLION

6 DOLLARS IN PAYABLES OUTSTANDING, AND THERE'S ONE  
7 OF THEM THAT SAYS, "REMAINING PARCELS 1,350,000  
8 DOLLARS."

9 DO YOU SEE THAT?

10 A. YES.

11 Q. OKAY. WHY IS THERE STILL A BALANCE  
12 OF -- FOR REMAINING PARCELS?

13 A. AGAIN, AT THAT TIME, I TOLD YOU WE  
14 HAD DIFFERENT CONTRACTS THAT WERE TO BE PURCHASED  
15 AT DIFFERENT TIMES. THERE'S STILL ONE PARCEL THAT  
16 WE HAVEN'T YET PURCHASED.

17 SO WHEN YOU TALK ABOUT THE  
18 PROPERTY, YOU HAVE TO SAY WHICH PART OF THE  
19 PROPERTY.

20 IF I REPRESENTED THAT EVERYTHING --  
21 AND EVEN BY SAYING "EVERYTHING," YOU HAVE TO  
22 DEFINE WHAT "EVERYTHING" IS.

23 THERE'S STILL CONTRACTS THAT WE  
24 HAVE THAT HAVEN'T BEEN COMPLETE. SO I DON'T KNOW  
25 WHAT THE TOTAL IS RIGHT NOW. BUT THE DATE AND

0533

1 TIME, DIFFERENT PROPERTIES WERE TAKEN FROM LEASE  
2 TO PURCHASE.

3 Q. ON YOUR BALANCE SHEET, AS OF THE  
4 THIRD QUARTER OF 2009, IT SAYS YOU OWE ONE MILLION  
5 THREE FIFTY?

6 A. CORRECT.

7 Q. WHAT'S THAT FOR?

8 A. PARCELS, I BELIEVE, THAT WE HAVE  
9 NOT TAKEN FROM LEASE TO PURCHASE AS OF THIS DATE.

10 Q. SO -- SO THOSE PARCELS ARE -- WHAT  
11 TYPE OF LEASE ARE THEY ON?

12 A. BASICALLY, A 90-YEAR LEASE.

13 Q. AND THEN YOU HAVE, "B DEVELOPMENT."  
14 WHO'S THAT?

15 A. BAJA DEVELOPMENT.

16 Q. THAT'S YOU? THEY OWE YOU 198,000?  
17 OR D.D.M. OWES YOU 198,000?

18 MS. CROWTHER: OBJECTION TO THE  
19 TERM "YOU."

20 BY MR. RICHARDS:

21 Q. OWES BAJA DEVELOPMENT 198,000?

22 A. IF THAT'S WHAT IT SAYS.

23 Q. AND THEN SAYS BAJA MANAGEMENT IS  
24 OWED 662,000?

25 A. OKAY.

0534

1 Q. WELL, DO YOU KNOW -- AND THEN  
2 THERE'S LEGAL TITLE.

3 DO YOU KNOW WHAT THAT IS?

4 A. AGAIN, THAT'S, MOST LIKELY, ANOTHER  
5 PARCEL THAT NEEDS TO BE PURCHASED. I DON'T KNOW  
6 FOR SURE.

7 Q. WHAT'S T.L.J. PAYABLES?

8 A. T.L.J. IS ANOTHER CORPORATION.

9 Q. AND WHO OWNS THAT?

10 A. I DO.

11 Q. AND WHY DID -- IS THAT TAFFY L.  
12 JOWDY?

13 A. NO. IT'S MY FATHER'S NAME AND MY  
14 MOTHER'S NAME.

15 Q. AND WHAT IS THAT -- WHY ARE THEY  
16 OWED 358,000?

17 A. I'D HAVE TO LOOK AT THE BOOKS AND  
18 RECORDS. BUT OBVIOUSLY THEY HAD EXPENSES ON  
19 BEHALF OF DIAMANTE DEL MAR.

20 Q. DID YOU -- ARE THOSE EXPENSES  
21 DOCUMENTED ANYWHERE?

22 A. I'M SURE THEY ARE.

23 Q. SO WHY DID THE 3 MILLION DOLLAR  
24 K.S.I. LOAN AND THE 10 MILLION DOLLARS THAT KENNER  
25 BROUGHT YOU DID YOU ACQUIRE FEES TITLE?

0535

1 A. KENNER BROUGHT ME -- EXPLAIN TO ME  
2 THE 10 MILLION DOLLARS THAT KENNER BROUGHT ME.

3 Q. WELL, BETWEEN THE WIRES FROM THE  
4 HAWAII COMPANIES AND THE -- AND THE -- THE MONEY  
5 THAT HE RAISED IN THE INITIAL INVESTMENT.

6 A. WHAT DID HE GIVE ME 10 MILLION  
7 DOLLARS FOR?

8 Q. I DON'T KNOW. FOR YOU.

9 A. WELL, JUST DEFINE THE 10 MILLION  
10 DOLLARS, AND I'LL TELL YOU SPECIFICALLY WHAT EACH  
11 DOLLAR AMOUNT WENT FOR, WHETHER IT WAS A LOAN,  
12 WHETHER IT WAS AN INVESTMENT, WHAT TIME IT CAME  
13 AND WHAT IT WAS FOR.

14 Q. WELL, WE CAN'T -- WE WANTED YOU TO  
15 DEFINE IT. YOU SAID THEY WERE MOSTLY LOANS WITH  
16 NO REPAYMENT DATE WAS THE TESTIMONY. SO I DON'T  
17 KNOW.

18 THERE'S NO RECORD. YOU DON'T HAVE  
19 THE LEDGER AS TO WHAT -- HOW YOU ALLOCATED IT.

20 A. IF HE GAVE BAJA DEVELOPMENT A LOAN,  
21 THEN BAJA DEVELOPMENT DIDN'T HAVE AN OBLIGATION TO  
22 BUY ANYTHING, APPARENTLY.

23 Q. I'M JUST -- WHAT WAS THE TOTAL --  
24 YOUR -- YOU -- WHAT IS YOUR UNDERSTANDING OF HOW  
25 MUCH YOU RAISED WITH -- BETWEEN -- WHEN THIS

0536

1 INITIAL -- FROM THE INITIAL ROUND?

2 A. I BELIEVE THAT IT WAS APPROXIMATELY  
3 7 MILLION DOLLARS.

4 Q. AND YOU'RE SAYING IT WAS 7 MILLION.  
5 EVEN TODAY, THERE'S STILL 2 MILLION DOLLARS OF FEE  
6 TITLE THAT STILL NEEDS TO BE PAID?

7 A. YES.

8 Q. AND HOW COME BAJA DEVELOPMENT CORP.  
9 DIDN'T PAY SOMETHING OUT OF THE 2.75 MILLION THEY  
10 RECEIVED?

11 A. I HAVE NO IDEA WHAT YOU'RE TALKING  
12 ABOUT.

13 Q. HOW MUCH DID BAJA DEVELOPMENT CORP.  
14 RECEIVE OUT OF THAT MONEY?

15 A. I DON'T KNOW.

16 Q. DO YOU HAVE ANY IDEA?

17 A. OUT OF WHAT MONEY?

18 MS. CROWTHER: YEAH.

19 BY MR. RICHARDS:

20 Q. OUT OF THE INITIAL MONEY THAT  
21 D.B.M. RAISED.

22 A. NOTHING.

23 Q. WHAT ABOUT THE MONEY IT RECEIVED  
24 FROM KENNER ENTITIES?

25 A. OKAY.

0537

1 Q. WHAT DID IT DO WITH THAT MONEY?

2 MS. CROWTHER: OBJECTION.

3 COMPOUND.

4 BY MR. RICHARDS:

5 Q. OR DID IT SPEND ANY OF THAT MONEY  
6 ON DIAMANTE DEL MAR?

7 A. I DON'T KNOW.

8 Q. SO NOW, IT SHOWS THAT IN THE BANK  
9 PRESENTLY IS 22 DOLLARS AND 36 CENTS.

10 IS THAT ACCURATE?

11 A. I DON'T KNOW.

12 Q. WELL, WHAT ASSETS DOES DIAMANTE DEL  
13 MAR HAVE BESIDES THE LAND, IF YOU KNOW?

14 A. BASICALLY, THE LAND.

15 Q. AND IT SHOWS THAT -- THAT THERE'S A  
16 LOAN FROM BAJA DEVELOPMENT CORP. FOR 2,189,000.

17 DO YOU SEE THAT? A PAYABLE.

18 A. YES.

19 Q. AND WHY DID BAJA DEVELOPMENT  
20 LOAN -- OR ISN'T IT TRUE THAT BAJA DEVELOPMENT  
21 GAVE DIAMANTE DEL MAR SOME OF THE MONEY THAT THE  
22 HAWAII ENTITIES SENT TO BAJA DEVELOPMENT CORP.,  
23 AND THAT'S WHY THERE'S A LOAN PAYABLE ON THE  
24 BALANCE SHEET OF D.D.M.?

25 A. I WOULD SAY A MAJORITY OF THAT

0538

1 MONEY WAS THE INITIAL MONEY THAT WAS RAISED  
2 THROUGH BAJA MANAGEMENT AND BAJA DEVELOPMENT.

3 IF YOU LOOK AT 2002, WHEN MOST OF  
4 THAT MONEY CAME IN, THAT'S -- MORE THAN HALF OF  
5 THAT MONEY WAS IN 2002, WHICH WOULD HAVE BEEN --  
6 PREDATED THE -- ANY MONEY FROM LITTLE ISLE 4 AND  
7 ULA MAKIKA.

8 Q. AND THEN IT SAYS MONEY IS OWED --  
9 1.1 MILLION IS OWED TO LEGACY PROPERTIES.

10 A. OKAY.

11 Q. SO -- AND IN 2000 -- IT SAYS LEGACY  
12 PROPERTIES SPENT CLOSE TO A MILLION DOLLARS OR  
13 GAVE CLOSE TO A MILLION DOLLARS TO D.D.M. IN 2008  
14 AND 2009?

15 A. OKAY.

16 Q. SO WHERE DID LEGACY PROPERTIES GET  
17 THE MONEY FROM?

18 A. FEES FROM -- DEVELOPER FEES FROM  
19 PROJECTS THAT IT WAS INVOLVED IN.

20 Q. THESE WERE -- THESE WERE PROJECTS  
21 THAT WERE NOT THE MEXICAN PROJECTS?

22 A. NO.

23 Q. THESE ARE OTHER PROJECTS?

24 A. YES.

25 Q. SO HOW DID LEGACY PROPERTIES

0539

1 DETERMINE THAT IT NEEDED TO PROVIDE LOANS TO  
2 DIAMANTE DEL MAR?

3 A. I'M THE MANAGING MEMBER OF LEGACY  
4 PROPERTIES.

5 Q. WHAT ARE -- IF YOU LOOK AT THE  
6 BALANCE SHEET, IT HAS A LOAN PAYABLE OF 795,000 TO  
7 LITTLE ISLE.

8 A. YES.

9 Q. OKAY. SO DO YOU AGREE THAT YOU AT  
10 LEAST RECEIVED 800,000 DOLLARS FROM LITTLE ISLE?

11 A. 700 -- THAT SAYS 795,000.

12 Q. YEAH. SO WAS THERE ANY INTEREST  
13 ACCRUING?

14 A. NOT THAT I KNOW OF.

15 Q. WHAT ABOUT ON THE LEGACY PROPERTIES  
16 LOANS PAYABLE, WHAT'S THE INTEREST RATE OF THAT?

17 A. THERE'S NO SET INTEREST RATE.

18 Q. SO YOU'RE -- SO DIAMANTE DEL MAR  
19 WAS ABLE TO BORROW MONEY FOR FREE, IS THAT WHAT  
20 YOUR TESTIMONY IS?

21 A. I'M SAYING THERE'S NO SET INTEREST  
22 RATE.

23 Q. WELL, WHAT IS THE INTEREST RATE IF



24 IT'S NOT SET?

25 A. THERE'S NO SET INTEREST RATE.

0540

1 Q. ALL RIGHT. YOU -- IF YOU TAKE --  
2 WHEN DID THE 3 MILLION DOLLAR K.S.I. LOAN CLOSE?

3 A. I BELIEVE FEBRUARY OF '06.

4 Q. AND IS IT YOUR TESTIMONY THAT BY  
5 FEBRUARY OF '06 -- WHERE ON THE -- WELL, LET ME  
6 STRIKE THAT.

7 WHERE ON THE -- DO YOU DOCUMENT ON  
8 D.D.M.'S BOOKS HOW THE MONEY WAS SPENT?

9 A. I DON'T KNOW.

10 Q. ARE YOU AWARE THAT YOUR BANK  
11 RECORDS FOR FEBRUARY '06 THAT YOU PROVIDED ONLY  
12 SHOW 500,000 DOLLARS IN THE BANK AND DON'T SHOW AN  
13 INCOMING WIRE FOR 3 MILLION DOLLARS?

14 A. IT WOULDN'T BE A WIRE FOR 3 MILLION  
15 DOLLARS, BUT I KNOW IT WENT INTO THAT ACCOUNT.

16 I DIDN'T SEE WHICH ACCOUNT IT WENT  
17 INTO. I BELIEVE -- I BELIEVE -- I KNOW IT WENT  
18 INTO THE DIAMANTE DEL MAR ACCOUNT, SO I CAN FIND  
19 OUT WHAT YOU HAVE.

20 Q. I HAVE BANK STATEMENTS FROM HUDSON,  
21 UNITED BANK AND TD BANK OF NORTH -- TD BANK.

22 A. I'M SURE IT WENT TO A DIAMANTE -- A  
23 DIAMANTE DEL MAR ACCOUNT.

24 Q. DO YOU THINK -- DO YOU BELIEVE THAT  
25 IN YOUR EXECUTIVE SUMMARY OR IN YOUR OFFERING

0541

1 MEMORANDUM, IT IMPLIES IN ANY WAY THAT AFTER YOU  
2 RECEIVED 7,150,000 DOLLARS IN CAPITAL, THAT THE  
3 ENTITY IS NOT GOING TO HAVE FEE SIMPLE TO ALL THE  
4 LAND REPRESENTED IN THE PLACEMENT?

5 MS. CROWTHER: OBJECTION. THE  
6 DOCUMENT SPEAKS FOR THEMSELVES. AND IT CALLS FOR  
7 SPECULATION.

8 THE DEPONENT: I BELIEVE IF WE WENT  
9 THROUGH THE DOCUMENT, IT WOULD PROVIDE FOR THAT,  
10 YES.

11 BY MR. RICHARDS:

12 Q. I'M GOING TO SWITCH OVER TO THE  
13 GENERAL LEDGER.

14 ALL RIGHT. I'M GOING TO SHOW YOU  
15 THE GENERAL LEDGER. OKAY. THIS IS THE GENERAL  
16 LEDGER. I'M GOING TO -- THIS IS YOUR GENERAL  
17 LEDGER.

18 AND IF WE -- IF WE SCROLL DOWN  
19 TO -- IF WE SCROLL DOWN TO FEBRUARY OF '02, IT  
20 SHOULD HAVE -- IT SHOULD HAVE A -- YOUR GENERAL  
21 LEDGER STOPS -- WHEN DID YOU SAY YOU GOT THE LOAN,

22 IN FEBRUARY OF '03?

23 A. '06.

24 Q. FEBRUARY '06. OKAY. SO HOLD ON.

25 SORRY.

0542

1 OKAY. SO IF WE GO DOWN TO FEBRUARY  
2 OF '06, WE SHOULD SEE A 3 MILLION DOLLAR CREDIT  
3 SOMEWHERE. SO THIS MUST BE THE MORTGAGE  
4 PROCEEDS --

5 A. THAT'S THE BALANCE.

6 Q. WHAT -- WHAT -- TELL ME WHAT WAS  
7 THE -- WHAT WAS THE -- THIS IS FROM WEITZ,  
8 GOLDMAN & LOEHMAN?

9 A. YES.

10 Q. OKAY. NOW, TELL ME -- EXPLAIN TO  
11 ME --

12 MS. CROWTHER: FOR THE RECORD, CAN  
13 YOU SAY WHICH BATES PAGE.

14 MR. RICHARDS: YEAH. 4953.

15 BY MR. RICHARDS:

16 Q. WHY, IF YOU GOT A 3 MILLION DOLLAR  
17 LOAN, DID YOU PAY 850,000 IN POINTS?

18 A. IT WAS TWO HUNDRED -- 2 MILLION  
19 8-5, I BELIEVE. I BELIEVE THERE WAS A  
20 RESERVE FOR POSSIBLY DOING SOMETHING IN THE  
21 FUTURE. SO IT WASN'T TECHNICALLY 3 MILLION.

22 IT'S NOT TECHNICALLY 3 MILLION.

23 THAT'S THE PRINCIPAL. SO THAT WAS LESS.

24 THERE WERE POINTS. I DON'T KNOW  
25 WHAT THE POINTS WERE. AND THERE WERE, I BELIEVE,

0543

1 EITHER SIX OR NINE MONTHS OF PREPAID INTEREST.  
2 BALANCE BEING WHAT YOU SEE THERE.

3 Q. OKAY. AND THEN WHEN THAT LOAN CAME  
4 IN, THERE WAS -- THERE'S A PAYMENT TO T.L.J. FOR  
5 25,000 DOLLARS.

6 A. OKAY.

7 Q. NOW, IT SAYS, FOR MANAGEMENT."  
8 WHAT EXACTLY IS THAT FEE FOR?

9 A. WELL, AS YOU SAW ON THE BALANCE  
10 SHEET, T.L.J. HAD INCURRED EXPENSES. AND THAT WAS  
11 A PARTIAL REPAYMENT.

12 Q. THAT'S A COMPANY OWNED BY YOU?

13 A. YES.

14 Q. AND THEN IT SAYS -- IF YOU GO --  
15 LET ME JUST STAY HERE. I DON'T THINK I NEED  
16 THESE.

17 THERE'S -- IF WE GO DOWN -- IF I GO  
18 DOWN THE LIST -- I'LL ENLARGE IT IN A MINUTE.  
19 IT'S JUST EASIER TO READ HERE.

20                               YOU -- YOU HAVE A -- YOU HAVE A  
21 25,000 DOLLAR CREDIT TO T.L.J. MANAGEMENT, AND  
22 THEN YOU TRANSFERRED 500,000 DOLLARS TO -- IS  
23 THIS -- IS THIS -- IS THIS ANOTHER DIAMANTE  
24 ACCOUNT?

25                               A.   IT'S A DIAMANTE DEL MAR MONEY  
0544

1       MARKET ACCOUNT, I BELIEVE.

2                               Q.   OKAY. AND THEN YOU -- THE BALANCE  
3 SHEET STARTS TO -- YOU GO DOWN THE -- YOU GO DOWN  
4 THE BALANCE SHEET, AND YOU SPEND 48,000 DOLLARS TO  
5 EDWARD ESSA.

6                               AND IT SAYS:

7                               "EXPENSES JULY '06 TO DECEMBER  
8 AND THEN NOVEMBER 4TH TO D.C.L.'S  
9 CLOSE."

10                              WHY -- WHY IS -- WHY IS HE GETTING  
11 PAID 48,000 DOLLARS?

12                              A.   IT SAYS HE INCURRED EXPENSES, SO WE  
13 WERE OBVIOUSLY REIMBURSING HIM FOR EXPENSES.

14                              Q.   BUT FOR -- FOR -- FOR WHAT?

15                              A.   I DON'T KNOW.

16                              Q.   RELATED TO THIS -- IT SEEMS LIKE  
17 IT'S RELATED TO CABO SAN LUCAS.

18                              A.   NO.

19                              Q.   WHAT'S IT -- DO YOU KNOW WHAT THE  
20 EXPENSES ARE?

21                              A.   I DON'T NOW WHAT THE EXPENSES ARE.

22                              Q.   ALL RIGHT. AND THEN IT SAYS, "BAJA  
23 DEVELOPMENT PAYABLE."

24                              IS THAT -- THAT'S -- WHO -- WHERE  
25 DOES THAT MONEY GO TO?

0545                              A.   APPARENTLY BAJA DEVELOPMENT.

1                              Q.   THEN LOR MANAGEMENT -- NOW, REMIND  
2 YOU, WE'RE IN '06 -- GETS PAID 457,000 DOLLARS FOR  
3 LAND.

4                              WHAT LAND IS LOR MANAGEMENT BUYING?

5                              A.   NO. LOR MANAGEMENT IS THE ONE THAT  
6 HAS THE LEASEHOLD, SO IT WOULDN'T MAKE SENSE THAT  
7 THAT IT COULD HAVE BEEN FOR A PURCHASE. BUT I  
8 BELIEVE THAT WAS FOR THE AIRSTRIP CONTRACTOR.

9                              Q.   SO BY THIS TIME HE STILL HADN'T  
10 BEEN PAID?

11                              A.   NOT IN ITS -- NOT IN ENTIRETY.  
12 HE'D BEEN MAKING -- HE'D BEEN MAKING PAYMENTS THAT  
13 FINISHED IT.

14                              Q.   ALL RIGHT. SO WITHIN -- WITHIN ONE  
15 MONTH OF -- OF RECEIVING THE 2 MILLION DOLLARS,  
16 THE GENERAL LEDGER ON THIS ACCOUNT GOES TO -- GOES  
17

18 TO ABOUT 22,000 DOLLARS.

19 A. OKAY.

20 Q. AND SO AT WHAT POINT -- AT WHAT  
21 POINT WERE YOU GOING TO DISCLOSE TO THE INVESTORS  
22 IN THIS COMPANY THAT YOU WERE OUT OF MONEY?

23 A. PHIL KENNER WAS AWARE OF THE  
24 SITUATION.

25 Q. AND WHAT DO YOU BASE THAT ON?

0546

1 A. CONVERSATIONS WITH PHIL KENNER.

2 Q. WHY IS THE COMPANY, WHEN IT'S  
3 RUNNING OUT OF MONEY, PAYING BAJA DEVELOPMENT  
4 CORP. -- AND IF YOU GO BACK TO ADD THESE UP --  
5 OVER 300,000 DOLLARS TOWARDS THEIR LOANS? AFTER  
6 IT GETS MORE BORROWED MONEY, WHY IS IT PAYING BAJA  
7 DEVELOPMENT CORP.?

8 A. I BELIEVE THAT IT WAS ENTITLED TO  
9 DO THAT. AND BAJA DEVELOPMENT DID EVERYTHING IT  
10 COULD TO KEEP THE COMPANY RUNNING.

11 AND I BELIEVE THAT WHATEVER ACTIONS  
12 ARE ON HERE ARE -- ARE ACCOUNTED FOR IN THE  
13 OFFERING MEMORANDUM AND THE OPERATING AGREEMENTS.

14 Q. WELL, DID IT EVER OCCUR TO YOU --  
15 WELL, WHO -- WHO OWNS THE -- WHO DOES THE -- WHO'S  
16 THE -- WHO'S THE PERCENTAGE OWNERS OF BAJA  
17 DEVELOPMENT CORP.?

18 MS. CROWTHER: OKAY. HOW MANY  
19 TIMES ARE YOU GOING TO ASK?  
20 BY MR. RICHARDS:

21 Q. OKAY. WHO BENEFITED THE MOST FOR  
22 PAYING THE LOANS PAYABLE FOR BAJA DEVELOPMENT  
23 CORP.?

24 MS. CROWTHER: OBJECTION.  
25 ARGUMENTATIVE AND CALLS FOR A CONCLUSION.

0547

1 BY MR. RICHARDS:

2 Q. WELL, DID YOU EVER CONSIDER NOT  
3 MAKING A PREFERENTIAL PAYMENT TO BAJA DEVELOPMENT  
4 CORP. TO TAKE THE CASH OUT OF THE COMPANY?

5 MS. CROWTHER: OBJECTION TO THE  
6 TERM "PREFERENTIAL."

7 THE DEPONENT: I BELIEVE IF WE WENT  
8 THROUGH THE DOCUMENTS, IT WOULD TELL YOU WHAT I  
9 COULD AND COULDN'T DO.

10 BY MR. RICHARDS:

11 Q. BUT YOU HAVE A -- YOU AGREE THAT  
12 YOU HAVE A FIDUCIARY DUTY TO THE INVESTORS --

13 MS. CROWTHER: OBJECTION. CALLS  
14 FOR A LEGAL CONCLUSION.

15 BY MR. RICHARDS:

16 Q. -- IN THIS -- IN THIS COMPANY.  
17 SO I'M JUST -- WHY DIDN'T IT OCCUR  
18 TO YOU NOT TO PAY A COMPANY THAT YOU OWNED  
19 THESE -- THESE -- THESE LOANS PAYABLE AND PAY  
20 OTHER EXPENSES OF THE -- OF THE COMPANY IN ORDER  
21 TO PREVENT THE COMPANY FROM RUNNING OUT OF MONEY?

22 A. I BELIEVE I ACTED RESPONSIBLY  
23 ACCORDING TO WHAT THE DOCUMENTS SHOW.

24 Q. WELL, I'M NOT ASKING YOU IF YOU  
25 ACTED ACCORDING TO THE LETTER OF THE DOCUMENTS.

0548

1 BUT I'M JUST ASKING: DO YOU THINK  
2 THAT YOU ACTED IN THE BEST INTEREST OF THE COMPANY  
3 BY PAYING BAJA DEVELOPMENT BEFORE YOU PAID THE  
4 EXPENSES OF THE COMPANY?

5 THAT'S MY QUESTION.

6 A. I BELIEVE I'VE ACTED IN THE BEST  
7 INTEREST OF THE COMPANY.

8 Q. BY PAYING BAJA DEVELOPMENT?

9 A. YOU ASKED ME IF I BELIEVE I'VE  
10 ACTED IN THE BEST INTEREST OF THE COMPANY.

11 Q. WELL, HOW DID -- HOW DID DIAMANTE  
12 DEL MAR BENEFIT BY YOU TRANSFERRING 400,000  
13 DOLLARS TO BAJA DEVELOPMENT TO PAY THEIR LOAN  
14 NOTES PAYABLE?

15 A. SAME WAY IT BENEFITED WHEN THE  
16 MONEY WENT TO DIAMANTE DEL MAR.

17 Q. DO YOU THINK THAT THE COMPANY WOULD  
18 BENEFIT IF THAT MONEY WAS RETURNED IN ORDER TO  
19 SERVICE THE EXISTING DEFAULT SO THE COMPANY  
20 DOESN'T LOSE THE LAND ENTIRELY?

21 A. WHAT DO YOU MEAN, "RETURNED"?

22 Q. WELL, IF BAJA DEVELOPMENT CORP. DID  
23 NOT HAVE -- DID NOT RECEIVE PAYMENTS ON ITS -- ON  
24 ITS LOANS PAYABLE, IT WOULD BE ABLE TO SERVICE  
25 THIS DEBT FOR A LOT MORE -- A LOT LONGER BECAUSE

0549

1 IT WOULD THEN HAVE CASH IN THE BANK.

2 MS. CROWTHER: OBJECTION. CALLS  
3 FOR SPECULATION.

4 THE DEPONENT: WHAT DO YOU WANT ME  
5 TO SAY?

6 BY MR. RICHARDS:

7 Q. WELL, WHAT -- I'M ASKING YOU. IT  
8 JUST SEEMS TO ME THAT YOU BORROWED -- YOU BORROWED  
9 MONEY -- I MEAN, YOU CAN'T -- YOU'RE A PRETTY  
10 SMART GUY, SO LET'S NOT, LIKE, BEAT AROUND THE  
11 BUSH.

12 YOU BORROWED MONEY FROM A COMPANY  
13 WHICH ENCUMBERED LAND WHICH WAS FREE AND CLEAR;

14 TRUE OR FALSE?

15 A. TRUE.

16 Q. AND THEN WHEN THE MONEY CAME IN,  
17 INSTEAD OF KEEPING IT IN THE COMPANY TO SERVICE  
18 THE DEBT, YOU SIMPLY PAID YOUR OTHER COMPANY THE  
19 MONEY THAT WAS BORROWED USING THE ASSET OF  
20 DIAMANTE DEL MAR.

21 IS THAT TRUE OR FALSE?

22 A. I WAS REPAYING A LOAN. THAT'S  
23 TRUE.

24 Q. SO IS THAT -- IS THAT -- IS THAT  
25 BETTER THAT THE COMPANY THAT YOU OWN -- IS IT

0550

1 BETTER FOR DIAMANTE DEL MAR -- I'M JUST ASKING YOU  
2 A SIMPLE QUESTION. IT'S A VERY SIMPLE QUESTION.

3 IS IT BETTER FOR DIAMANTE DEL MAR  
4 TO HAVE THAT MONEY THAT WENT TO BAJA DEVELOPMENT  
5 IN THEIR BANK ACCOUNT OR BAJA DEVELOPMENT'S BANK  
6 ACCOUNT?

7 MS. CROWTHER: OBJECTION. CALLS  
8 FOR AN OPINION. ARGUMENTATIVE.

9 THE DEONENT: IT'S NOT A SIMPLE  
10 QUESTION.

11 BY MR. RICHARDS:

12 Q. OKAY. WELL, IT'S A SIMPLE -- THEN  
13 GIVE ME A COMPLICATED ANSWER.

14 A. DEPENDING IF IT -- IF -- UNDER THE  
15 CIRCUMSTANCES OF WHICH BAJA DEVELOPMENT LOANED THE  
16 MONEY AND NEEDED THE MONEY, IT'S NOT A "YES" OR  
17 "NO" ANSWER.

18 BUT I DID WHAT I WAS ALLOWED TO DO.

19 Q. BUT YOU ALSO HAD -- CLEARLY, YOU  
20 HAD KENNER ON THERE -- YOU HAD KENNER'S COMPANIES  
21 ON THERE AS A 795,000 DOLLAR NOTE PAYABLE; ISN'T  
22 THAT TRUE?

23 A. YES.

24 Q. SO WHY DIDN'T KENNER'S COMPANY GET  
25 PAID BEFORE BAJA DEVELOPMENT?

0551

1 A. HE WAS STILL THE ONE THAT WAS  
2 ACTUALLY FUNDING THE PROJECTS. HE WAS HELPING  
3 FUND THE PROJECTS AT THE TIME. HE WAS CONTINUING  
4 TO HELP FUND THE PROJECTS. WHEN THAT -- WHEN THAT  
5 MONEY CAME IN IS NOT CLEAR TO ME.

6 Q. WHEN WHAT MONEY CAME IN?

7 A. WHEN THE LITTLE ISLE MONEY CAME IN.  
8 PHIL WAS HELPING TO FUND THE  
9 PROJECTS.

10 Q. WELL, WE SEE -- OKAY.  
11 WHEN THE LITTLE ISLE MONEY CAME IN

12 IS EASY TO DETERMINE IF YOUR GENERAL LEDGER IS  
13 ACCURATE. THE -- IT WOULD COME IN AS A DEBIT  
14 BECAUSE NOT A LOT OF MONEY COMES IN AFTER THAT --  
15 AFTER THAT LOAN.

16 WELL, YOU HAD -- THAT MONEY CAME IN  
17 IN NOVEMBER OF '04. LET ME ...

18 YEAH, I KNOW.

19 ALL RIGHT. LET'S SEE HERE. OKAY.

20 HERE IT IS.

21 MONEY CAME IN RIGHT HERE, IF YOU  
22 CAN SEE. THERE'S JUST -- FOR EXAMPLE, ON 1-18-05,  
23 250,000 DOLLARS.

24 A. OKAY.

25 Q. SO THAT -- WHAT I'M TRYING TO

0552

1 FIGURE OUT IS WHY DID YOU PAY YOURSELF BEFORE YOU  
2 PAID YOUR OTHER LENDERS?

3 A. I DON'T KNOW WHAT THE CIRCUMSTANCES  
4 WERE. I KNOW THAT I WAS ALLOWED TO.

5 Q. YOU SAID THAT PROBABLY 20 TIMES,  
6 BUT I'M ASKING: IS THERE A REASON WHY YOU PAID  
7 YOURSELF BEFORE EVERYBODY ELSE?

8 A. I SAID I DON'T KNOW WHAT THE  
9 CIRCUMSTANCES WERE.

10 Q. DO YOU THINK THAT THAT WAS IN THE  
11 BEST BUSINESS JUDGMENT OF DIAMANTE DEL MAR, TO PAY  
12 ANY LENDER, NOT YOU OR MR. KENNER, PRIOR TO  
13 KEEPING THE EXISTING OPERATIONS OPEN?

14 A. APPARENTLY AT THE TIME I DID.

15 Q. AND WHAT WAS YOUR THINKING AT THE  
16 TIME YOU DRAINED THE CASH OUT OF THE COMPANY?

17 A. I DON'T KNOW.

18 Q. HAS ANYBODY TOLD YOU IN THE PAST  
19 THAT TAKING ALL THE MONEY OUT OF THE CORPORATE  
20 BANK ACCOUNT IS A GOOD THING FOR THE COMPANY?

21 MS. CROWTHER: OBJECTION.

22 MR. RICHARDS: I'LL WITHDRAW THE  
23 QUESTION.

24 BY MR. RICHARDS:

25 Q. DID YOU RELY ON ANY ADVICE TO PAY

0553

1 YOURSELF BEFORE YOU PAID MR. KENNER?

2 A. I DIDN'T PAY MYSELF. I PAID BAJA  
3 DEVELOPMENT. AND, NO.

4 Q. BUT IT'S A COMPANY THAT YOU CONTROL  
5 AND OWN EXCLUSIVELY.

6 MS. CROWTHER: WE'VE BEEN THROUGH  
7 THIS SO MANY TIMES.

8 (SPEAKING SIMULTANEOUSLY.)

9 BY MR. RICHARDS:

10 Q. ON -- YOU -- RAYMOND MURRAY PAID  
11 YOU 500 AND -- 400 -- 500,000 DOLLARS -- THAT'S  
12 THE WIRE -- ON 3-29-05.

13 WHAT WAS THAT FOR?

14 A. I BELIEVE HE SIGNED THE  
15 SUBSCRIPTION AGREEMENT.

16 Q. NOW, IF WE TAKE A LOOK -- IF YOU GO  
17 BACK AND TAKE A LOOK AT THE SUBSCRIPTION  
18 AGREEMENT -- I MEAN THE OPERATING AGREEMENT -- I  
19 THINK I GAVE YOU A COPY IN FRONT OF YOU.

20 WOULD YOU TAKE A LOOK AT SECTION  
21 205.

22 A. WHAT PAGE?

23 Q. 47. ACTUALLY -- ACTUALLY, LET'S --  
24 LET'S -- ACTUALLY 207, COMPANY EXPENSES.

25 DO YOU BELIEVE YOU COMPLIED WITH  
0554

1 SECTION 207?

2 (DOCUMENT REVIEWED BY THE DEPONENT.)  
3 BY MR. RICHARDS:

4 Q. HERE. LET ME -- LET ME HELP YOU  
5 OUT.

6 YOUR DUTIES ARE DEFINED, IF YOU  
7 TAKE A LOOK AT PAGE 57 --

8 A. 47?

9 Q. 57. PARAGRAPH J IN SECTION 401.  
10 IT SAYS THAT AS PART OF YOUR MANAGEMENT, YOU CAN  
11 INCUR REASONABLE EXPENDITURES FOR THE CONDUCT OF  
12 THE COMPANY'S BUSINESS AND PAY ALL EXPENSES, DEBTS  
13 AND OBLIGATIONS OF THE COMPANY.

14 AND THEN 402 SAYS THAT -- SECTION  
15 402, THE NEXT PAGE.

16 NOW, LET ME -- LET ME JUST ASK YOU  
17 THIS. OKAY. BECAUSE THIS IS A VERY IMPORTANT  
18 QUESTION.

19 SECTION 402, SUBSECTION E.  
20 DO YOU SEE WHERE I'M AT?

21 A. UH-HUH.

22 Q. OKAY. IT SAYS YOU NEED A  
23 MAJORITY -- YOU NEED A -- YOU NEED A CONSENT OF  
24 THE MAJORITY IN INTEREST OF THE CLASS A MEMBERS TO  
25 DO -- PARAGRAPH E:

0555

1 "TO DO ANY ACT WHICH MAKES IT  
2 IMPOSSIBLE TO CARRY OUT THE ORDINARY  
3 BUSINESS OF THE COMPANY."

4 NOW, PRIOR TO YOU TAKING THE REST  
5 OF THE MONEY OUT OF THE D.D.M. OPERATING ACCOUNT  
6 TO PAY YOURSELF, HOW DID YOU THINK THAT THAT  
7 WOULDN'T MAKE IT IMPOSSIBLE -- LET ME STRIKE THAT.



8 PRIOR TO YOU TRANSFERRING THE MONEY  
9 TO BAJA DEVELOPMENT CORPORATION, WHICH BROUGHT THE  
10 ACCOUNT TO ZERO, DID YOU -- DID YOU CONSIDER  
11 PARAGRAPH E OF SECTION 402?

12 MS. CROWTHER: OBJECTION.  
13 MISSTATES THE EVIDENCE.

14 (DOCUMENT REVIEWED BY THE DEPONENT.)

15 THE DEPONENT: DID I CONSIDER THAT  
16 EXACT -- I DON'T THINK I MADE IT IMPOSSIBLE TO  
17 CARRY OUT THE ORDINARY BUSINESS THAT THE COMPANY  
18 WAS DOING AT THE TIME.

19 BY MR. RICHARDS:

20 Q. AND WHY IS THAT?

21 A. IT'S STILL DOING THE SAME THING  
22 TODAY.

23 Q. WHICH IS NOTHING?

24 A. WHICH IS PAYING CERTAIN PEOPLE  
25 THERE AND BASICALLY TRYING TO BE IN A POSITION TO

0556

1 FURTHER THE DEVELOPMENT AT SOME TIME IN THE  
2 FUTURE.

3 Q. BUT TODAY YOU -- THE COMPANY YOU  
4 SAID TODAY, YOU TESTIFIED -- YOU SAID IT'S IN  
5 ARREAR -- DO YOU KNOW MUCH -- HOW MANY MONTHS  
6 ARREARAGES IT IS ON THAT NOTE?

7 A. NOT EXACTLY, NO.

8 Q. IS IT -- IS IT CONCERNING TO YOU  
9 THAT AS THE MANAGING MEMBER OF THE COMPANY, YOU  
10 DON'T KNOW HOW MANY MONTHS YOU'RE IN DEFAULT?

11 A. I BELIEVE IT'S THREE TO FOUR  
12 MONTHS.

13 Q. AND DO YOU -- DO YOU KNOW IF  
14 THEY'RE GOING TO -- WHAT THE LAWS ARE IN MEXICO  
15 RELATED TO HOW LONG IT TAKES THEM TO -- TO  
16 FORECLOSE ON TITLE?

17 A. WE'RE NEGOTIATING WITH THEM.

18 Q. AND DO YOU KNOW WHEN THEY'RE --  
19 WHEN -- WHEN THE DEADLINE IS FOR THEM TO ELECT TO  
20 FORECLOSE IF THEY WANT?

21 A. THERE'S NO DEADLINE RIGHT NOW.

22 Q. AND HOW DO YOU KNOW THAT?

23 A. THROUGH THE NEGOTIATIONS. I DON'T  
24 BELIEVE THERE IS. I'M NOT A LAWYER.

25 Q. RIGHT. WELL, I KNOW. BUT YOU --

0557

1 MOST PEOPLE KNOW WHEN AND IF THEY COULD LOSE, YOU  
2 KNOW, MILLIONS OF DOLLARS' WORTH OF LAND. SO I'M  
3 JUST TRYING TO FIGURE OUT --

4 A. WELL, YOU ASKED ME -- YOU ASKED  
5 ME -- I SAID THERE'S NO DEADLINE. YOU ASKED ME

6 HOW DO I KNOW THAT, AND I SAID THAT'S WHAT I'M  
7 TOLD. I'M NOT A LAWYER.

8 Q. NOW, PARAGRAPH 402C SAYS YOU CAN'T  
9 MAKE ANY LOANS OR GUARANTEE THE INDEBTEDNESS OF  
10 ANY PARTY OTHER THAN A SUBSIDIARY OR CONTRACTOR OR  
11 SERVICE MATERIALS PROVIDER ENGAGED BY THE COMPANY  
12 OR ANY -- OR ANY SUBSIDIARY, YET BAJA DEVELOPMENT  
13 CORP. IS NOT A SUBSIDIARY OF THIS COMPANY, IS IT?

14 A. NO. IT DIDN'T MAKE A LOAN.

15 Q. WELL, THEN WHY DOES IT HAVE NOTES  
16 PAYABLE?

17 A. IT SAYS, "MAKE A LOAN," NOT RECEIVE  
18 A LOAN.

19 Q. SO WHEN YOU -- WHEN YOU -- WELL,  
20 THE BAJA -- BAJA DEVELOPMENT CORPORATION, DID IT  
21 ACTUALLY PUT CASH INTO THE COMPANY AT SOME POINT?

22 A. I BELIEVE SO.

23 Q. AND WHERE -- WHERE ON THE LEDGER  
24 DOES IT SHOW THAT IT PUT CASH INTO THE COMPANY?

25 MS. CROWTHER: OBJECTION. THE

0558

1 DOCUMENT SPEAKS FOR ITSELF.

2 LET HIM SEE IT.

3 BY MR. RICHARDS:

4 Q. ALL RIGHT. DO YOU HAVE ANY IDEA  
5 WHEN, IF AT ALL, BAJA DEVELOPMENT CORP. MADE ANY  
6 LOANS?

7 A. I DON'T HAVE THE -- I KNOW IT'S PUT  
8 MONEY INTO THE COMPANY, MORE MONEY THAN IT'S TAKEN  
9 OUT. QUITE A BIT MORE.

10 Q. AND HOW -- AND WHAT ARE YOU BASING  
11 THAT ON?

12 A. WELL, THERE'S A PAYABLE TO BAJA  
13 DEVELOPMENT CORP.

14 Q. UH-HUH.

15 WHAT TYPE OF CRITERION DID YOU  
16 EMPLOY TO DETERMINE WHICH CREDITORS GOT PAID BACK  
17 FIRST FROM THE LOAN PROCEEDS OF THE K.S.I. LOAN?

18 A. I DON'T KNOW.

19 Q. IS BAJA DEVELOPMENT CORP. WILLING  
20 TO RETURN THE LOAN PROCEEDS OR THE -- OR THE  
21 PAYMENTS IT RECEIVED FROM DIAMANTE DEL MAR IN  
22 ORDER TO KEEP THE COMPANY OPERATIONAL?

23 A. NO.

24 Q. AND WHY NOT?

25 A. LEGACY PROPERTIES HAS DONE THE BEST

0559

1 THAT IT COULD. AND I'VE DONE THE BEST THAT I  
2 COULD -- CAN, AND STILL AM DOING, TO KEEP THE  
3 COMPANY OPERATIONAL.

4 Q. WHAT DOES -- WHAT DOES LEGACY  
5 PROPERTIES HAVE TO DO WITH BAJA DEVELOPMENT CORP.?

6 A. NOTHING. YOU ASKED ME IF BAJA  
7 DEVELOPMENT CORP. THE ANSWER IS NO, SO I WON'T --  
8 I WON'T EXPOUND UPON THAT.

9 Q. NO. I'M ASKING WHY WON'T BAJA  
10 DEVELOPMENT CORP. --

11 A. IT'S NOT CAPABLE.  
12 (SPEAKING SIMULTANEOUSLY.)

13 BY MR. RICHARDS:

14 Q. AND HAS LEGACY PROPERTIES -- WHY  
15 ISN'T IT CAPABLE? WHAT HAPPENED -- I MEAN, WHAT  
16 HAPPENED TO THE MONEY THAT BAJA DEVELOPMENT CORP.  
17 RECEIVED ONCE IT WAS GIVEN FROM DIAMANTE DEL MAR?

18 A. I DON'T KNOW.

19 MS. CROWTHER: OBJECTION. INSTRUCT  
20 YOU NOT TO ANSWER. NOT RELEVANT.

21 DEPOSITION OFFICER: I'M SORRY.  
22 THERE WAS AN ANSWER.

23 MS. CROWTHER: I INSTRUCT YOU NOT  
24 TO ANSWER. NOT RELEVANT.

25 DEPOSITION OFFICER: NO. I SAID HE  
0560

1 DID ANSWER.

2 MS. CROWTHER: OKAY.

3 DEPOSITION OFFICER: SO IT'S ON THE  
4 RECORD. I JUST WANT TO LET YOU KNOW.

5 MS. CROWTHER: MOVE TO STRIKE.  
6 AND SLOW DOWN.

7 MR. RICHARDS: ROBYN, I DON'T KNOW  
8 WHY YOU THINK THAT IF BAJA DEVELOPMENT CORP. --  
9 HOW YOU COULD POSSIBLY THINK THAT IF HE'S WRITING  
10 A CHECK TO HIMSELF, THAT IT'S NOT RELEVANT AS  
11 TO -- AS TO WHERE THAT MONEY WENT.

12 MS. CROWTHER: WELL, I DISAGREE  
13 WITH ALMOST EVERYTHING YOU JUST SAID.

14 AND WE SPENT A WHOLE BUNCH OF TIME  
15 TALKING ABOUT THIS THIS MORNING.

16 WHEN BAJA DEVELOPMENT GETS REPAID,  
17 YOU CAN ARGUE THAT IT WAS INAPPROPRIATE FOR IT TO  
18 BE REPAID.

19 YOU ARE NOT ENTITLED TO KNOW WHAT  
20 IT DOES WITH THE MONEY.

21 WE'RE NOT HERE ABOUT BAJA  
22 DEVELOPMENT CORP., SO I'M NOT GOING TO LET YOU  
23 SPEND A LOT OF TIME ASKING HIM TO DO AN ORAL  
24 ACCOUNTING OF A COMPANY THAT NOBODY HERE BUT HIM  
25 HAS ANY INTEREST IN.

0561

1 MR. RICHARDS: BUT THEY'RE A

2 DEFENDANT.

3 MS. CROWTHER: AS OF YESTERDAY.  
4 AND MAYBE. I DON'T KNOW THAT YOU FILED THOSE. I  
5 DON'T THINK THE SERVICE WAS -- WAS VALID.

6 MR. RICHARDS: WHY NOT?

7 MS. CROWTHER: WELL, I'M NOT GOING  
8 TO GET INTO THAT EITHER.

9 MR. RICHARDS: OKAY. WELL, WE DID  
10 FILE THEM. OF COURSE WE FILED THEM.

11 MS. CROWTHER: I HAVE NO IDEA IF  
12 YOU FILED THEM.

13 MR. RICHARDS: THEY WERE CONFORMED  
14 COPIES.

15 MS. CROWTHER: I DON'T KNOW IF  
16 THEY'VE BEEN FILED. THIS IS WHAT I'M TELLING YOU.

17 MR. RICHARDS: ALL RIGHT. WELL,  
18 I'M JUST TRYING TO -- I JUST DON'T SEE, IF WE'RE  
19 ENTITLED TO AN ACCOUNTING, WHY THE ACCOUNTING  
20 STOPS AT WHERE HE TRANSFERS THE MONEY.

21 MS. CROWTHER: YOU AREN'T ENTITLED  
22 TO AN ACCOUNTING FROM BAJA DEVELOPMENT CORP. YOU  
23 AREN'T.

24 BY MR. RICHARDS:

25 Q. IT SAYS, IN YOUR GENERAL LEDGER --

0562

1 OR NOT IN YOUR GENERAL LEDGER, IN YOUR BALANCE  
2 SHEET, THAT YOU SPENT APPROXIMATELY 989,000  
3 DOLLARS IN MARKETING EXPENSES.

4 DID YOU -- BUT THERE'S NO BREAKDOWN  
5 OF THAT.

6 CAN YOU BREAK THAT DOWN AT ALL?

7 A. NO. I DON'T KNOW.

8 Q. SO YOU DON'T KNOW HOW YOU SPENT A  
9 MILLION DOLLARS?

10 A. WELL, YOU CAN SEE 100,000 DOLLARS  
11 WAS ON THAT INVOICE FOR BROCHURES.

12 Q. RIGHT. BESIDES THAT, DO YOU HAVE  
13 ANY KNOWLEDGE AS TO WHERE ELSE THAT MONEY WENT?

14 A. I'M SURE SOME OF IT WENT ON  
15 SALARIES. I'M SURE SOME OF IT WENT ON FLIGHTS TO  
16 AND FROM THE PROPERTY. I DON'T HAVE A SPECIFIC  
17 BREAKDOWN.

18 Q. OKAY. I MEAN, YOU DON'T HAVE A  
19 GENERAL IDEA WHAT YOU SPENT THE MONEY ON?

20 A. SALARIES, WEB SITE, BROCHURES,  
21 FLIGHTS, OTHER MARKETING, HOTELS.

22 Q. IF THE COMPANY WANTED TO -- IF THE  
23 COMPANY WANTED TO SHOW THE PROPERTY FOR -- TO  
24 EXISTING -- ANY PROSPECTIVE PURCHASERS, HOW WOULD  
25 THE COMPANY GET MONEY AT THIS POINT TO GET YOU

0563

1 FROM POINT A TO POINT B TO MARKET THE PROPERTY?  
2 A. I WOULD HAVE TO DO IT RIGHT NOW.  
3 Q. AND SO WHERE WOULD YOU GET THE  
4 MONEY FROM?  
5 A. WHATEVER INCOME THAT I HAVE.  
6 Q. WHATEVER INCOME THAT -- THAT YOU  
7 HAVE FROM JUST YOUR OTHER -- YOU ONLY HAVE INCOME  
8 FROM ONE SOURCE AT THIS POINT; RIGHT?  
9 A. RIGHT NOW, YES.  
10 Q. YEAH. AND HOW IS THE -- ON THIS  
11 RESTRUCTURING THAT YOU'RE DOING WITH K.S.I., HOW  
12 IS K.S.I. GOING TO -- HOW ARE YOU GOING TO SERVICE  
13 THAT DEBT IF THE COMPANY HAS NO ASSETS AND NO  
14 INCOME?  
15 MS. CROWTHER: OBJECTION.  
16 MISSTATES THE EVIDENCE.  
17 MR. RICHARDS: IT DOES?  
18 MS. CROWTHER: YES.  
19 BY MR. RICHARDS:  
20 Q. OKAY. HOW -- DOES THE COMPANY HAVE  
21 ANY INCOME?  
22 A. NO.  
23 Q. OKAY. SO HOW IS THE COMPANY GOING  
24 TO SERVICE THE DEBT THAT IT RESTRUCTURES WITH  
25 K.S.I.?

0564

1 A. WE'RE ATTEMPTING TO BRING IN A  
2 JOINT VENTURE PARTNER AND BUY OUT THE LOAN.  
3 Q. TO BUY OUT THE LOAN.  
4 AND THEN WOULD YOU HAVE TO PAY THE  
5 JOINT VENTURE PARTNER?  
6 A. NO. THE JOINT VENTURE PARTNER  
7 WOULD INVEST IN THE PROPERTY.  
8 Q. IF -- WHAT DO YOU -- DO YOU HAVE  
9 ANY IDEA IF THE PROPERTY IS WORTH MORE THAN THE  
10 DEBT AT THIS POINT?  
11 A. I BELIEVE IT IS.  
12 Q. BUT YOU DON'T -- YOU DON'T HAVE ANY  
13 IDEA -- YOU DON'T HAVE ANY -- HOW MUCH LONGER ARE  
14 YOU GOING TO TRY TO -- IF THE JOINT VENTURE  
15 PARTNER DOESN'T WORK OUT -- WHEN WILL YOU KNOW  
16 WHEN THE JOINT VENTURE PARTNER IS GOING TO WORK  
17 OUT OR NOT?  
18 A. I DON'T KNOW.  
19 Q. YOU DON'T KNOW?  
20 WELL, IS THERE -- I MEAN, NO ONE IS  
21 GIVING YOU ANY PARAMETERS -- YOU'RE NOT WORKING  
22 UNDER ANY TIMETABLE WITH THIS LENDER? THEY SEEM  
23 VERY EASYGOING.

24 A. WELL, WE'RE TRYING TO GET THEM  
25 PAID, AND THEY'RE, SO FAR, BEING COOPERATIVE WITH  
0565

1 US IN OUR EFFORTS. AGAIN, MADE MORE DIFFICULT BY  
2 THIS SITUATION, BUT THAT'S OKAY.

3 Q. DOES THE -- HOW COME -- HAVE YOU  
4 MADE ANY ATTEMPTS JUST TO SELL THE PROPERTY SO  
5 THE -- SO THAT THE LENDER CAN GET PAID AND THE  
6 INVESTORS CAN GET PAID?

7 MS. CROWTHER: OBJECTION. ASKED  
8 AND ANSWERED. WE DID THIS YESTERDAY.  
9 BY MR. RICHARDS:

10 Q. BESIDES THE JOINT VENTURE, DO YOU  
11 HAVE ANY OTHER -- OTHER -- BESIDES THE JOINT  
12 VENTURE, DO YOU HAVE ANY OTHER OPTIONS THAT  
13 YOU'RE -- THAT YOU'RE CURRENTLY AWARE OF?

14 A. NO. OTHER THAN PUTTING THE  
15 PROPERTY UP FOR SALE.

16 Q. HAVE YOU MADE AN OFFER TO THE OTHER  
17 INVESTORS -- HAVE YOU CONSIDERED MAKING AN OFFER  
18 TO THE OTHER INVESTORS TO JUST BUY WHATEVER YOUR  
19 INTEREST IS LEFT AND TAKE OVER THE SERVICING OF  
20 THE DEBT?

21 A. HAVE I CONSIDERED WHAT?

22 Q. MAKING AN OFFER TO THE OTHER OWNERS  
23 TO JUST TAKE YOUR POSITION AND CONTINUE SERVICING  
24 THE DEBT SO IT'S NOT LOST?

25 A. NO.

0566 1 Q. WOULD YOU CONSIDER DOING THAT?  
2 A. NO.

3 Q. WHY NOT?  
4 A. TO THE PLAINTIFFS? I THINK THE

5 PLAINTIFFS HAVE A LOT TO DO WITH ME BEING IN THIS  
6 POSITION.

7 Q. WELL, IF IT COMES TO THE POINT  
8 WHERE YOU CAN'T FIND A JOINT VENTURE PARTNER, ARE  
9 YOU JUST GOING TO LET THE PROPERTY GO IN  
10 FORECLOSURE, OR ARE YOU GOING TO AT LEAST MAKE  
11 THAT OFFER?

12 MS. CROWTHER: OBJECTION. CALLS  
13 FOR SPECULATION.

14 THE DEPONENT: I'M GOING TO DO  
15 EVERYTHING I CAN. BUT IF IT GETS TO THAT POINT, A  
16 GOOD REASON -- A BIG REASON WILL BE BECAUSE OF  
17 THIS LITIGATION AND BECAUSE OF WHAT THEY STARTED  
18 WITH ME.

19 BY MR. RICHARDS:

20 Q. SO IT -- SO IT'S YOUR POSITION -- I  
21 JUST WANT TO MAKE SURE I UNDERSTAND YOUR POSITION.

22 IF YOU CAN'T WORK OUT AN  
23 ARRANGEMENT WITH THE LENDER BY BRINGING IN SOMEONE  
24 ELSE TO BUY OUT THE LOAN, ARE YOU GOING TO LOSE  
25 THE PROPERTY BEFORE YOU SEEK ASSISTANCE FROM THE

0567

1 OTHER INVESTORS OF THIS COMPANY?

2 MS. CROWTHER: OBJECTION. CALLS  
3 FOR SPECULATION.

4 THE DEPONENT: I DON'T KNOW WHAT MY  
5 OPTIONS ARE. I'LL WEIGH MY OPTIONS WHEN THAT TIME  
6 COMES.

7 BY MR. RICHARDS:

8 Q. OKAY. WHAT ABOUT WITH THE CABO SAN  
9 LUCAS PROPERTY? WHAT'S THE TIMETABLE ON WHEN  
10 YOU'RE GOING TO FIND OUT WHETHER OR NOT THEY'VE  
11 AGREED TO GIVE YOU AN ADDITIONAL 4 MILLION  
12 DOLLARS?

13 A. I TOLD YOU THAT'S BEEN APPROVED,  
14 AND WE'RE JUST IN LOAN MODIFICATIONS. SO IT'S  
15 JUST GETTING THE DOCUMENTS DONE.

16 Q. AND IS THE ONLY RESPONSIBLE PARTY  
17 ON THAT LOAN GOING TO BE DIAMANTE CABO SAN LUCAS?

18 MS. CROWTHER: OBJECTION. CALLS  
19 FOR A LEGAL CONCLUSION.

20 THE DEPONENT: I DON'T KNOW.

21 BY MR. RICHARDS:

22 Q. WELL, DO YOU KNOW WHO ELSE IS GOING  
23 TO BE OBLIGATED ON THE LOAN?

24 MS. CROWTHER: OBJECTION. SAME  
25 QUESTION. AND CALLS FOR A LEGAL CONCLUSION.

0568

1 THE DEPONENT: I DON'T KNOW.

2 BY MR. RICHARDS:

3 Q. AND WITH RESPECT TO THE 4 MILLION  
4 DOLLARS, DO YOU KNOW WHAT YOU'RE GOING TO DO WITH  
5 THAT MONEY?

6 A. WE HAVE A BUDGET FOR THAT MONEY,  
7 YES.

8 Q. OKAY. ARE YOU GOING TO BE PAYING  
9 YOURSELF BACK ANY LOAN PAYABLES OUT OF THAT MONEY?

10 A. NO.

11 Q. IS ANY OF THAT MONEY GOING TO GO TO  
12 ANY COMPANY THAT YOU OWN OR CONTROL FROM THE  
13 4 MILLION DOLLARS?

14 A. OTHER THAN TO PAY PAYROLL, NO.

15 Q. SO IT'S JUST GOING TO PAY PAYROLL  
16 AND OPERATING EXPENSES?

17 A. YES.

18 Q. AND YOUR SALARY?

19 A. YES.

20 Q. AND MR. NAJAM'S SALARY?

21 A. PAYROLL.

22 Q. HAVE YOU EVER THOUGHT OF  
23 TERMINATING MR. NAJAM TO SAVE MONEY?

24 A. NO.

25 Q. HAVE YOU EVER THOUGHT OF NOT TAKING

0569

1 A SALARY IN ORDER TO TRY TO SAVE THE PROJECT?

2 A. I HAVE. AND I'VE DONE THAT IN  
3 DIAMANTE DEL MAR. AND I DID THAT WITHIN THE FIRST  
4 YEAR OF DIAMANTE DEL MAR. AND WHAT I COULD HAVE  
5 TAKEN AND WHAT I DIDN'T TAKE.

6 SO I'VE SHOWN IN THE PAST THAT I'D  
7 BE WILLING TO DO THAT.

8 Q. IS THERE A REASON WHY -- IS THERE A  
9 REASON WHY WE DON'T HAVE ANY OF THE BOOKS AND  
10 RECORDS OF DIAMANTE CABO SAN LUCAS?

11 A. I'M SURE THERE'S A GOOD REASON.

12 MR. RICHARDS: BECAUSE, ROBYN, THAT  
13 WAS ALSO ON MY PRODUCTION REQUEST.

14 MS. CROWTHER: I DON'T KNOW WHAT --  
15 I DON'T KNOW WHAT YOU'RE TALKING ABOUT, AND I'D  
16 HAVE TO CHECK.

17 MR. RICHARDS: I MEAN, BECAUSE THE  
18 ONLY RECORDS WE GOT WERE -- WERE -- WERE BAJA  
19 DEVELOPMENT.

20 MS. CROWTHER: I HAVE TO CHECK.

21 MR. RICHARDS: NOT BAJA

22 DEVELOPMENT. DIAMANTE DEL MAR.

23 THE DEPONENT: WELL, WHY WOULD YOU  
24 GET -- WHY WOULD YOU GET DIAMANTE CABO SAN LUCAS?  
25 THE PLAINTIFFS AREN'T -- YOU GAVE THEM RECORDS FOR

0570

1 WHAT THEY WERE -- HAD AN INTEREST IN.

2 MS. CROWTHER: I HAVE TO CHECK AND  
3 SEE WHAT I AGREED -- WHAT WE AGREED TO PRODUCE AND  
4 WHAT WE DID PRODUCE. I DON'T KNOW OFF THE TOP OF  
5 MY HEAD. WE'LL TALK ABOUT IT OFF THE RECORD. I'M  
6 NOT GOING TO ANSWER.

7 BY MR. RICHARDS:

8 Q. ARE YOU GOING TO USE SOME OF THE  
9 4 MILLION DOLLARS TO PAY LEGAL FEES?

10 A. UNFORTUNATELY, I WILL, YES.

11 Q. OKAY. AND HOW MUCH OF THE BUDGET  
12 WAS APPROVED TO PAY LEGAL FEES?

13 A. I DON'T KNOW.

14 Q. YOU DON'T KNOW? WELL, WAS THERE --  
15 IS THERE A PORTION OF THE BUDGET TO PAY LEGAL  
16 FEES?

17 A. YES.



18 Q. SO IF THAT -- IF THE CASE SETTLED,  
19 THEN WOULD THAT MONEY BE PUT BACK INTO THE ACCOUNT  
20 OF DIAMANTE DEL MAR IF IT WASN'T USED FOR LEGAL  
21 FEES?

22 A. DIAMANTE CABO SAN LUCAS.

23 Q. YEAH. DIAMANTE CABO SAN LUCAS.

24 A. IT WOULD BE REAPPROPRIATED IN THE  
25 BUDGET, YES.

0571

1 Q. AND WHY ON YOUR BALANCE SHEET DID  
2 LOR MANAGEMENT GET WIRES EVERY MONTH FROM DIAMANTE  
3 DEL MAR?

4 A. THERE'S A PAYROLL.

5 Q. IS THAT WHO -- IS THAT WHO MAKES  
6 THE PAYROLL?

7 A. YES.

8 Q. AND DOES LOR MANAGEMENT CHARGE A  
9 FEE TO DIAMANTE DEL MAR FOR MAKING THE PAYROLL,  
10 FOR HANDLING THE MANAGEMENT OF THE PROPERTY?

11 A. NO.

12 Q. SO THEY DO IT FOR FREE?

13 A. IT'S A SUBSIDIARY, I BELIEVE.  
14 THERE'S NO FEE INVOLVED.

15 Q. SO -- DOES THE COMPANY PAY YOU A  
16 SALARY, LOR MANAGEMENT?

17 A. NO.

18 Q. SO IT'S JUST A -- IT'S JUST LIKE A  
19 HOLDING COMPANY FOR PAYROLL?

20 A. WELL, WE CAN'T PAY THE MEXICAN  
21 PAYROLL FROM THE UNITED STATES.

22 Q. WHY IS THAT?

23 A. I DON'T KNOW THE LAWS.

24 Q. OKAY. SO YOU JUST HAVEN'T SET  
25 UP -- IT'S LIKE A PASS-THROUGH COMPANY?

0572

1 MS. CROWTHER: OBJECTION. CALLS  
2 FOR AN OPINION --  
3 BY MR. RICHARDS:

4 Q. OR YOU JUST HAVE IT SET UP JUST TO  
5 DO PAYROLL ONLY?

6 A. NO.

7 Q. WHAT ELSE IS IT SET UP FOR TO DO?

8 A. IT HELD THE LEASEHOLD INTEREST IN  
9 THE PROPERTIES. IT STILL DOES IN ONE OR TWO OF  
10 THEM, I BELIEVE.

11 Q. OKAY. THERE WAS AN E-MAIL YOU  
12 SENT. IT'S 503, BUT IT'S JUST A SHORT ONE. IT  
13 SAYS:

14 "CALL ME ON MY CELL. I JUST HAD  
15 MY FIRST JOSEPH BAKER EXPERIENCE.

16 KEN."

17 WHO'S JOSEPH BAKER?

18 A. HE WAS SOMEONE THAT PHIL HAD PAID A  
19 LARGE AMOUNT OF MONEY AS A COMMITMENT FEE. HE WAS  
20 SUPPOSED TO LEND MONEY TO THE HAWAII PROJECT.

21 Q. DOES LOR OWN THE REMAINING  
22 LEASEHOLD INTERESTS IN THE DIAMANTE DEL MAR LOTS?

23 A. IN THE PARCELS?

24 Q. IN THE PARCELS.

25 A. I BELIEVE SO.

0573

1 Q. IF IN JUNE -- BY THE TIME IN  
2 JUNE -- IF CABO SAN LUCAS IS STILL NOT ABLE TO  
3 FINANCE ITS EXISTING 400,000 DOLLAR MONTHLY  
4 EXPENSES WITH -- BY SELLING LOTS, WHAT IS THE NEXT  
5 COURSE OF DIRECTION?

6 A. AT THAT POINT, IF WE HAVE TO GO AND  
7 GET ANOTHER LOAN MODIFICATION FROM DANSKE BANK,  
8 WE'LL HAVE TO MAKE A CASE TO DO THAT.

9 Q. DID DANSKE BANK INDICATE THEY WILL  
10 CONTINUALLY GIVE YOU LOAN MODIFICATIONS?

11 A. THEY CAN'T MAKE THAT REPRESENTATION  
12 NOW. BUT DEPENDING ON THE PROGRESS AND THE  
13 PROCESS, I'M SURE WHEN IT'S APRIL, AND WE HAVE TO  
14 MAKE THE ASSESSMENT, WE CAN SEE WHAT THE PROGRESS  
15 IS.

16 BUT I BELIEVE THEY'RE COMMITTED TO  
17 THE PROJECT.

18 Q. DO YOU THINK IT'S REALISTIC, BASED  
19 ON YOUR EXPERIENCE IN CABO THE LAST FEW YEARS  
20 PRESENTLY, THAT YOU'LL BE ABLE TO SELL ENOUGH  
21 PARCELS TO COVER THE EXISTING EXPENSES OF THE  
22 PROJECT AND SERVICE THE DEBT THAT WOULD BE AT  
23 129 MILLION DOLLARS BY JUNE?

24 A. I BELIEVE IT'S REASONABLE, YES.

25 Q. AND WHAT DO YOU BASE THAT OPINION

0574

1 ON?

2 A. I BASE IT ON BEING THERE EVERY DAY.  
3 KNOWING THE TRAFFIC THAT WE HAVE COME THROUGH.  
4 HOPEFULLY GETTING THIS RESOLVED.

5 AND I BELIEVE THAT IT'S, YOU KNOW,  
6 VERY REASONABLE THAT BY THE TIME JUNE COMES, WE  
7 WILL HAVE SHOWN ENOUGH PROGRESS AND ENOUGH SALES  
8 TO NOT ONLY KEEP THE OPERATIONS GOING, BUT TO  
9 CONTINUE WITH INFRASTRUCTURE AND DEVELOPMENT.

10 Q. YOU MENTIONED THAT YOU BELIEVED  
11 THAT THE PLAINTIFFS IN THIS CASE HAVE BEEN GIVEN  
12 ERRONEOUS INFORMATION ABOUT WHAT YOU DID WITH  
13 THEIR INVESTMENT. YOU MADE THAT STATEMENT A

14 COUPLE TIMES.

15 THAT IF YOU HAD A CHANCE TO TALK TO  
16 THEM, YOU WOULD BE ABLE TO EXPLAIN THAT YOU'VE  
17 DONE NOTHING IMPROPER.

18 DO YOU REMEMBER THAT GENERAL  
19 TESTIMONY?

20 A. I DIDN'T SAY THAT -- THAT THEY  
21 WOULD -- GIVEN WHAT I'VE DONE WITH THEIR  
22 INVESTMENT.

23 I SAID WHAT THEY'VE DONE IN THE  
24 COMPLAINT IS COMPLETELY FALSE. I THINK THAT'S  
25 WHAT I SAID. AND I'D LOVE TO HAVE A CHANCE TO

0575

1 TALK TO EACH ONE INDIVIDUALLY.

2 Q. WELL -- AND WE WENT THROUGH, YOU  
3 KNOW A LARGE PORTION OF THE COMPLAINT YESTERDAY.  
4 AND I'LL LET YOU FINISH THE LAST COUPLE PAGES SO  
5 WE HAVE A COMPLETE RECORD.

6 BUT NOTWITHSTANDING THE COMPLAINT,  
7 WHAT WOULD BE -- WHAT WOULD YOU TELL EACH OF  
8 THE -- WHAT WOULD YOU TELL THE PLAINTIFFS AS TO  
9 HOW THEY'RE GOING TO RECOVER THEIR INVESTMENT IN  
10 THE VARIOUS -- IN THE TWO DEVELOPMENTS THAT  
11 THEY'VE GIVEN YOU MONEY FOR?

12 MS. CROWTHER: OBJECTION AS TO THE  
13 TERM "YOU."

14 BY MR. RICHARDS:

15 Q. OH. THAT THEY'VE GIVEN THE  
16 ENTITIES THAT YOU'RE THE MANAGING MEMBER OF, THAT  
17 YOU HAVE A FIDUCIARY DUTY TO.

18 MS. CROWTHER: OBJECTION. VAGUE  
19 AND COMPOUND.

20 THE DEPONENT: WHAT WOULD I TELL  
21 THEM?

22 BY MR. RICHARDS:

23 Q. YEAH.

24 A. THE THIRST THING I'D TELL THEM IS  
25 THEY DID A LOT OF DAMAGE TO THEM GETTING THEIR

0576

1 MONEY BACK, TO ME PERSONALLY AND TO THE PROJECTS.

2 AND THE FACT THAT THEY DID THAT TO  
3 ME WITH SUCH MALICIOUS INTENT IS HURTFUL.

4 AND NOTWITHSTANDING THAT, I BELIEVE  
5 THE WAY TO CORRECT THAT IS TO HAVE THEM COME OUT  
6 AND TELL THE TRUTH.

7 UNDERSTAND THAT THERE IS MONEY --  
8 THERE IS MONEY TO BE MADE, BUT IN THE SITUATION  
9 THAT IT IS CURRENTLY, THEY'VE DAMAGED THE  
10 PROJECTS.

11 WITH THAT SAID WE'RE STILL MOVING

12 FORWARD. WE OPENED UP A GREAT GOLF COURSE IN CABO  
13 SAN LUCAS. WE HAVE TRAFFIC THERE EVERY DAY.

14 I BELIEVE THAT WE'RE GOING TO SELL.  
15 I BELIEVE THAT WE'RE GOING TO BE SUCCESSFUL.  
16 THEY'VE MADE IT MUCH MORE DIFFICULT, BUT I'D LIKE  
17 TO GO THROUGH EACH POINT WITH THEM AND WHAT  
18 THEY'VE SAID AND LET THEM UNDERSTAND THAT I DON'T  
19 THINK THAT IN OUR COUNTRY YOU CAN JUST MAKE SUCH  
20 ALLEGATIONS AND SUCH MALICIOUS ALLEGATIONS AND NOT  
21 HAVE SOME ACCOUNTABILITY FOR THEM.

22 Q. WELL, PRIOR TO THE LITIGATION  
23 ENSUING, THERE WAS NOT ONE SINGLE SALE; ISN'T THAT  
24 TRUE?

25 A. YES.

0577

1 Q. SO WHAT -- WHY DO -- IS THERE  
2 SOMETHING THAT -- DO -- HOW LONG DO YOU THINK THE  
3 PLAINTIFFS SHOULD HAVE WAITED BEFORE THEY DID  
4 SOMETHING AFFIRMATIVE TO COLLECT THEIR MONEY?

5 MS. CROWTHER: OBJECTION.  
6 ARGUMENTATIVE. LACKS FOUNDATION. CALLS FOR  
7 SPECULATION.

8 THE DEPONENT: WELL, IF --  
9 SHOULD I ANSWER OR NOT?

10 MS. CROWTHER: IF YOU WANT TO. IF  
11 YOU CAN.

12 THE DEPONENT: WELL, I MEAN, I  
13 THINK THAT IF THEY HAD A PROBLEM, THEY COULD GO  
14 BACK TWO YEARS.

15 AND UP UNTIL -- UP UNTIL MAY OF  
16 '08, PHIL KENNER WAS THE DIRECTOR OF SALES. AND  
17 THERE WAS ALL SORTS OF ISSUES AND PROBLEMS WITH  
18 THAT THAT NEEDED TO BEEN CONTENDED WITH.

19 IN SEPTEMBER OF '08 THERE WAS THE  
20 LEHMAN BANKRUPTCY. THE ECONOMY HAS OBVIOUSLY BEEN  
21 DAMAGED.

22 AND IN MARCH OF '09, WE WERE  
23 RESTRUCTURED UNDER DANSKE BANK.

24 IN JUNE, THIS LAWSUIT CAME OUT.  
25 I THINK THAT THE FACT THAT THEY'RE

0578

1 IN A REAL ESTATE DEAL IN CABO SAN LUCAS, AND IT  
2 HAS -- STILL HAS A HIGH POTENTIAL OF SUCCESS IS  
3 SOMETHING THAT THEY SHOULD BE HAPPY WITH.

4 BY MR. RICHARDS:

5 Q. IS IT TRUE OR UNTRUE THAT THERE'S  
6 NO SINGLE PERSON THAT HAS BROUGHT MORE CAPITAL TO  
7 YOUR -- TO DEVELOPMENTS SINCE 2003 THAN  
8 PHILLIP KENNER?

9 A. TRUE.

10 Q. SO WHY IS -- WHAT IS THE -- WHAT IS  
11 THE SOURCE OF -- OF YOUR INABILITY TO SPEAK WITH  
12 MR. KENNER ABOUT -- IF MR. KENNER'S BEEN THE  
13 SINGLE BIGGEST SOURCE OF CAPITAL CONTRIBUTION,  
14 THROUGH HIM OR HIS CLIENTS, SINCE 2003, WHAT IS  
15 THE REASON WHY YOU CAN'T OPERATE THE CABO SAN  
16 LUCAS PROJECT WITH MR. KENNER?

17 A. ARE YOU SERIOUS?

18 Q. YEAH. I MEAN, YOU COULD -- YOU  
19 TERMINATED HIM, SO I'M JUST -- I'M TALKING ABOUT  
20 WHAT WAS THE REASON?

21 A. THAT'S A SERIOUS QUESTION?

22 Q. YEAH.

23 A. OKAY. WELL, WE CLOSED THIS DEAL IN  
24 MARCH OF '06. BY OCTOBER OF '06, HE WAS VOICING  
25 HIS DISPLEASURE WITH ME IN A SERIES OF E-MAILS.

0579

1 BY APRIL OF '07, WITHIN A YEAR, HE  
2 WAS SAYING THAT I WAS MISMANAGING THE PROJECT.

3 BY MAY OF '07, HE WAS CANCELLING  
4 ALL SALES CALLS. BY JUNE AND JULY OF '07, HE HAD  
5 TOMMY CONSTANTINE WORKING WITH HIM, THREATENING  
6 ME, THREATENING TO DO ALL THE THINGS THAT HE DID.

7 ALL THE ACCUSATIONS THAT HE'S MADE,  
8 THAT HE ENDED UP DOING, HE DID THAT.

9 SO WITHIN A YEAR, BASICALLY, HE HAD  
10 DETERMINED THAT I MISMANAGED THIS PROJECT. AND  
11 THERE ARE WAYS LEGALLY -- AND IF HE HAS THAT --  
12 THAT WAS HIS OPINION, THERE ARE WAYS THAT ARE  
13 PROVIDED FOR IN THE OPERATING AGREEMENTS, THERE  
14 ARE THINGS THAT YOU CAN DO THAT ARE PROVIDED FOR  
15 THAT WE COULD HAVE DONE AND THAT SHOULD HAVE BEEN  
16 DONE.

17 AND IF HE WANTS TO DO THAT, IT'S  
18 WITHIN HIS RIGHT TO DO THAT.

19 BUT TO GO ABOUT IT THE WAY HE HAS,  
20 AS MALICIOUSLY AS HE HAS -- AND FOR YOU TO ASK ME  
21 RIGHT NOW WHY I DON'T THINK I CAN WORK WITH HIM I  
22 THINK IS A PRETTY SILLY QUESTION.

23 Q. WELL, IT'S -- IT'S -- IT'S  
24 INTERESTING THAT A GUY THAT HAS BASICALLY PUT UP  
25 ALL THE MONEY TO ACQUIRE THESE PROPERTIES -- WELL

0580

1 LET ME STRIKE THAT.

2 ISN'T IT TRUE THAT HIS CONCERN WAS  
3 THAT -- THAT YOUR DISPUTE WITH HIM OR HIS CONCERNS  
4 WITH YOU AROSE WHEN YOU STARTED GOING TO TEXAS,  
5 AND THAT'S WHAT HE WAS UPSET ABOUT?

6 MS. CROWTHER: LACKS FOUNDATION.

7 THE DEPONENT: I DON'T KNOW. BUT

8 THERE WERE REMEDIES.  
9 IF HE HAD A PROBLEM, THERE ARE  
10 REMEDIES IN THE OPERATING AGREEMENT. NOT TO DO  
11 WHAT HE DID, THREATEN ME FOR A YEAR, AND THEN COME  
12 THROUGH ON THE THREATS.  
13 WHAT HE DID IN JUNE WITH THE FIRST  
14 LAWSUIT I DON'T THINK PUT HIM OR HIS PLAYERS IN  
15 ANY BETTER A POSITION TO -- TO GET THEIR MONEY  
16 BACK.  
17 IT MAY HAVE -- IN SOME SICK WAY, IT  
18 MAY HAVE BEEN HIS WAY OF THINKING HE CAN GET  
19 CONTROL OF THE PROPERTY, I DON'T KNOW.  
20 THERE WAS A STATEMENT IN THERE THAT  
21 SAID I WAS UNDER -- THERE WAS A WARRANT OUT FOR MY  
22 ARREST.  
23 DO YOU BELIEVE THERE WAS A WARRANT  
24 OUT FOR MY ARREST IN MEXICO? YOU PUT IT IN THERE.  
25 DO YOU BELIEVE THAT?

0581

1 Q. I BELIEVE EVERYTHING I PUT IN THE  
2 COMPLAINT.  
3 A. WELL, YOU'RE WRONG. THAT'S A LIE.  
4 AND IT WAS IN EVERY PAPER IN THE COUNTRY.  
5 DID YOU DO ANYTHING -- DID YOU DO  
6 ANYTHING -- SINCE YOU BELIEVE IT, DID YOU DO  
7 ANYTHING TO INVESTIGATE WHETHER THERE WAS A LIEN  
8 ON THE PROPERTY WHICH YOU SAID, WHETHER THERE WAS  
9 A WARRANT FOR MY ARREST? DID YOU DO ANYTHING?  
10 Q. YOU KNOW, MR. JOWDY, IF YOU WANT TO  
11 SUE ME, YOU CAN TAKE MY DEPOSITION.  
12 A. I WOULD LOVE TO.  
13 Q. THAT'S FINE WITH ME. I'LL FILE MY  
14 OWN SLAPP MOTION.  
15 A. OKAY.  
16 Q. IT'S NOT A PROBLEM.  
17 A. YOU HEARD THEY WORK, I GUESS, HUH?  
18 Q. THERE'S SOMETHING CALLED THE  
19 LITIGATION PRIVILEGE. YOUR LAWYER IS VERY SKILLED  
20 IN IT.

21 SO THE -- THE ISSUE IS, THOUGH, I'M  
22 NOT THE GUY THAT ACQUIRED ALL THIS MONEY -- THIS  
23 IS THE DIFFERENCE HERE, IS I'M NOT THE GUY THAT  
24 GOT 50 MILLION DOLLARS AFTER THIS PROPERTY WAS  
25 PURCHASED AND HASN'T PROVIDED ANY ACCOUNTING ON

0582

1 HOW 37 MILLION WAS SPENT. THAT'S -- THAT'S WHY  
2 WE'RE IN A LAWSUIT.  
3 A. PROVIDED AN ACCOUNTING TO WHO?  
4 Q. TO MR. KENNER, THE MEMBERS OF HIS  
5 COMPANY.

6 A. MR. KENNER ASKED FOR AN ACCOUNTING.  
7 HE ASKED TO LOOK AT THE BOOKS AND RECORDS. AND HE  
8 WAS GIVEN THAT OPPORTUNITY.

9 HE WENT TO CONNECTICUT. HE SHOULD  
10 HAVE SPENT FIVE DAYS LOOKING AT THIS MATERIAL. HE  
11 SPENT TWO HOURS. HE LABEL A FEW THINGS FOR  
12 COPIES, AND WE GAVE THEM TO HIM.

13 IF HE WANTS TO GO BACK, HE HAS A  
14 RIGHT TO DO THAT.

15 Q. AND LISTEN TO WHAT YOU'RE SAYING.  
16 YOU KEEP SAYING "THE RIGHT TO GO BACK."

17 YOU TESTIFIED THAT YOU HAVE THESE  
18 RECORDS IN ELECTRONIC FORMAT, WHICH EVERYBODY USES  
19 IN 2010. WE'RE NOT IN THE 1800S.

20 AND WHEN MR. KENNER SHOWED UP, YOU  
21 TESTIFIED YOU PUT -- LET THE RECORD REFLECT MY  
22 OFFICE HERE IS ABOUT -- THIS ROOM IS ABOUT 800  
23 SQUARE FEET.

24 YOU SAID WE CAN FILL UP A ROOM FULL  
25 OF BOXES WITH OUR PAPER RECORDS. SO IT'S NOT

0583

1 REASONABLE FOR SOMEONE TO FLY TO CONNECTICUT AND  
2 LOOK THROUGH PAPER RECORDS WHEN YOU HAVE IT ALL ON  
3 ELECTRONIC FORMAT.

4 MS. CROWTHER: OBJECTION. THAT  
5 MISSTATES THE EVIDENCE.

6 AND, KEN, I'M GOING TO INSTRUCT YOU  
7 NOT TO ANSWER ANY MORE QUESTIONS ABOUT THE  
8 DOCUMENTS YOU WILL OR WILL NOT MAKE AVAILABLE.

9 THE DEPONENT: OKAY.

10 MS. CROWTHER: THE RECORD IS  
11 EXHAUSTED ON THAT.

12 THE DEPONENT: OKAY.

13 BY MR. RICHARDS:

14 Q. HAVE YOU -- DO YOU HAVE THE ABILITY  
15 TO BUY -- DO YOU HAVE THE ABILITY TO SIMPLY GET  
16 DANSKE BANK TO BUY OUT THE DISILLUSIONED  
17 INVESTORS?

18 MS. CROWTHER: OBJECTION.  
19 ARGUMENTATIVE.

20 THE DEPONENT: I -- I DON'T HAVE  
21 THAT ABILITY, NO.

22 BY MR. RICHARDS:

23 Q. NO. DO YOU THINK THAT -- THAT IT'S  
24 A REALISTIC, LONG-TERM VIABILITY TO HAVE  
25 47 PERCENT OF THE ENTITY AT ODDS WITH THE OTHER

0584

1 53 PERCENT?

2 A. IT'S NOT -- IT'S NOT HEALTHY.

3 Q. SO I KNOW THAT YOUR LAWYER DID NOT

4 WANT YOU TO TESTIFY AS TO SETTLEMENT OFFERS. I'M  
5 NOT ASKING YOU TO DO THAT.

6 BUT I'M -- WHAT I AM TRYING TO  
7 FIGURE OUT IS IN THE ENTIRE TIME I'VE BEEN ON THIS  
8 CASE, WHICH IS, YOU KNOW, NOT MY ONLY FILE -- I  
9 HAVE 140 CASES -- NOT ONCE HAVE ANY OF MY CLIENTS  
10 RECEIVED A COMMUNICATION FROM YOU SAYING, HEY,  
11 THIS IS MY SOLUTION TO EITHER BREAK UP THIS  
12 MARRIAGE OR SOLVE THIS PROBLEM.

13 AND I JUST WANT TO ASK YOU: IS  
14 THERE A REASON YOU HAVEN'T CONTACTED MY CLIENTS  
15 DIRECTLY AS THE PARTY TO TRY AND RESOLVE THIS  
16 ISSUE THAT'S OBVIOUSLY, ACCORDING TO YOU, CAUSING  
17 A LOT OF PROBLEMS?

18 MS. CROWTHER: I WILL INSTRUCT YOU  
19 NOT TO ANSWER TO THE EXTENT YOU MADE A DECISION  
20 BASED ON COMMUNICATIONS WITH COUNSEL. IF THERE  
21 ARE OTHER REASONS THAT YOU CAN DISCLOSE, GO AHEAD.

22 THE DEPONENT: I ACTUALLY SENT AN  
23 E-MAIL RECENTLY TO TURNER STEVENSON TO CALL, AND  
24 HE DIDN'T CALL.

25 I WOULD LOVE TO TALK TO EACH ONE.  
0585

1 I DON'T KNOW HOW TO GET AHOLD OF THE PLAINTIFFS.  
2 IF I THOUGHT THAT THEY WOULD TALK TO ME, I WOULD  
3 LOVE TO TALK TO THEM. INDIVIDUALLY. ONE-ON-ONE.  
4 NO ONE ELSE IN THE ROOM. JUST ME AND THE OTHER  
5 PERSON.

6 BUT TO KNOW THAT ANY SETTLEMENT  
7 NEEDS TO BE A COMPLETE SETTLEMENT.  
8 BY MR. RICHARDS:

9 Q. OF COURSE.  
10 A. IT'S VERY DIFFICULT AT THIS POINT.  
11 AND THE THINGS NEED TO BE TAKEN  
12 INTO ACCOUNT AS TO THE POSITION THAT WE'RE IN AND  
13 THE POSITION CAUSED.

14 LOOK, WE CAN KEEP GOING BACK AND  
15 FORTH. BUT PERSONALLY, IF THEIR INTEREST WAS  
16 SOLELY TO SEE A RETURN ON THEIR INVESTMENT, I  
17 THINK THEY TOOK A BAD ROUTE.

18 A CALL TO ME BEFORE THIS ACTION,  
19 BECAUSE I DIDN'T KNOW THIS ACTION WAS GOING TO  
20 HAPPEN, A CALL -- ONE PHONE CALL TO ME WOULD HAVE  
21 PROBABLY GONE A LONG WAY TO NONE OF THIS EVER  
22 HAPPENING AND DAMAGE BEING IRREPARABLE ON MY SIDE,  
23 PROBABLY.

24 I DON'T KNOW. I DON'T KNOW IF --  
25 FIVE YEARS FROM NOW, IF CABO SAN LUCAS IS A  
0586

1 SUCCESSFUL PROJECT, IF I EVER LOSE THE STIGMA OF



2 WHAT HAPPENED TO ME OVER THE LAST SIX MONTHS. I  
3 DON'T KNOW.

4 BUT I THINK A CALL BEFORE IT, WHEN  
5 ALL THAT INFORMATION, INCLUDING A LOT -- OR  
6 90 PERCENT OF IT FALSE INFORMATION WAS PUT OUT ON  
7 ME, WOULD HAVE BEEN PRETTY HELPFUL.

8 Q. WELL, YOU -- PRIOR TO -- PRIOR  
9 TO -- THE ONLY PRIOR DEVELOPMENT BEFORE CABO SAN  
10 LUCAS WAS DIAMANTE DEL MAR. WE CERTAINLY AREN'T  
11 GOING TO SAY THAT'S A SUCCESS YET.

12 SO THE ONLY -- THERE'S NO, REALLY,  
13 OTHER BASIS TO -- WHEN YOU SAY HURTFUL TO YOU, YOU  
14 DON'T HAVE A TRACK RECORD AS A SUCCESSFUL  
15 DEVELOPER.

16 SO THE ONLY ISSUE IS HOW -- WHAT IS  
17 YOUR IDEA FROM A BUSINESS STANDPOINT TO TRY TO  
18 REPAIR SOME OF THE MARKETING PROBLEMS THAT HAVE  
19 OCCURRED AS A RESULT OF THIS LITIGATION?

20 MS. CROWTHER: LET ME JUST OBJECT  
21 BECAUSE THE PREAMBLE TO THAT QUESTION WAS  
22 CONFUSING AND VAGUE.

23 CAN YOU ASK -- I THINK YOU HAVE ONE  
24 SIMPLE QUESTION AT THE END THERE.

25 CAN YOU ASK HIM WHAT THE QUESTION

0587

1 IS?

2 MR. RICHARDS: WHY DON'T YOU ASK IT  
3 SINCE YOU SEEM TO HAVE IT ON YOUR BUFFER.

4 MS. CROWTHER: CAN YOU READ THE  
5 LAST SENTENCE THAT MR. RICHARDS SAID BEFORE I  
6 OBJECTED.

7 (THE RECORD WAS READ AS FOLLOWS:

8 Q. SO THE ONLY ISSUE IS HOW --  
9 WHAT IS YOUR IDEA FROM A BUSINESS  
10 STANDPOINT TO TRY TO REPAIR SOME  
11 OF THE MARKETING PROBLEMS THAT  
12 HAVE OCCURRED AS A RESULT OF THIS  
13 LITIGATION?)

14 MS. CROWTHER: THAT'S THE QUESTION  
15 YOU CAN ANSWER.

16 THE DEPONENT: FIRST IS FOR IT TO  
17 BE DISMISSED AND FOR THE PEOPLE THAT WERE INVOLVED  
18 TO SAY THAT THEY HAD NO KNOWLEDGE OF ANYTHING THAT  
19 THEY ACCUSED ME OF. THAT WOULD BE NUMBER ONE, I  
20 THINK.

21 AND THEN AFTER THAT, WE CAN WORK  
22 TOWARD GETTING A RESOLUTION.

23 BY MR. RICHARDS:

24 Q. SO YOU WANT THEM TO DISMISS THE  
25 LAWSUIT FIRST WITHOUT ANYTHING?

0588

1 A. NO. I WANT THEM TO TELL THE TRUTH.  
2 I WANT THEM TO TELL THE TRUTH.

3 IF THEY WANT TO GET UP IN FRONT OF  
4 EVERYBODY AND SAY THAT THEY HAD PERSONAL KNOWLEDGE  
5 OF EVERYTHING THEY SAID ABOUT ME, THEN THEY CAN  
6 SAY THAT. BUT I WANT THEM TO TELL THE TRUTH.

7 Q. WHAT IF THEY JUST SAY, "I GAVE  
8 KEN JOWDY A HALF A MILLION BUCKS, AND IT'S SEVEN  
9 YEARS LATER AND I HAVEN'T RECEIVED ANYTHING YET"?

10 MS. CROWTHER: OBJECTION.

11 THE DEPONENT: THEY -- THEY CAN SAY  
12 THEY INVESTED ACCORDING TO A DOCUMENT, AND IT  
13 HASN'T WORKED OUT AS PLANNED.

14 IF THEY WANT TO SAY THAT, THAT'S A  
15 TRUE STATEMENT. THEY SHOULD HAVE SAID THAT FROM  
16 DAY ONE. IF THEY WENT ON RECORD ON DAY ONE AND  
17 SAID THE TRUE STATEMENT, THAT'S ALL I WANT. SAY  
18 THE TRUTH.

19 BY MR. RICHARDS:

20 Q. I MEAN, EVEN -- EVEN IF THE LAWSUIT  
21 WAS -- WAS LIMITED TO ALL THE DEVELOPMENT PROBLEMS  
22 ON THE PROJECT AND ALL THE ISSUES THAT WERE  
23 RELATED TO THIS PROJECT IT STILL WOULD HAVE THE  
24 SAME DAMAGING EFFECT?

25 MS. CROWTHER: OBJECTION. THAT

0589

1 CALLS FOR SPECULATION.

2 THE DEPONENT: WELL, I WOULDN'T BE  
3 ON THE FRONT PAGE OF THE NEW YORK POST. I  
4 WOULDN'T BE IN EVERY NEWSPAPER.

5 THIS WOULD BE A LEGAL MATTER. IT  
6 WOULD BE -- I'M SURE YOU HAVE A LOT OF -- YOU'RE A  
7 HIGH-PROFILE LAWYER AND PROBABLY HAVE A LOT OF  
8 HIGH-PROFILE CASES.

9 I'M SURE, ROBYN, YOU HAVE A LOT OF  
10 CASES THAT AREN'T IN THE NEWSPAPERS. THEY'RE NOT  
11 IN THE NEWSPAPERS EVERY DAY.

12 AND WHEN I PICK UP A PHONE FROM  
13 SOMEBODY THAT HASN'T TALKED TO ME IN SIX MONTHS,  
14 I'M PRETTY CERTAIN THEY DON'T KNOW THAT THERE WAS  
15 A LAWSUIT IN ARIZONA, BUT I'M ALSO PRETTY CERTAIN  
16 THAT THEY KNOW ABOUT THIS CASE. AND THERE'S  
17 REASON FOR THAT.

18 AND I THINK THAT YOU DID THAT FOR A  
19 REASON.

20 BUT IF -- TO ANSWER YOUR QUESTION,  
21 I THINK THAT IN ORDER TO MOVE ON, THE PLAINTIFFS  
22 JUST NEED TO TELL THE TRUTH. HOWEVER YOU WANT TO  
23 PHRASE IT, HOWEVER YOU WANT TO TERM IT, THEY NEED

24 TO TELL THE TRUTH.

25 ///

0590

1 BY MR. RICHARDS:

2 Q. OKAY. AND WHAT -- I'M TALKING  
3 ABOUT, THOUGH, HOW DO -- IS YOUR BUSINESS STRATEGY  
4 TO KEEP THE PLAINTIFFS AS YOUR INVESTORS IN THIS  
5 DEAL?

6 A. MY BUSINESS STRATEGY WOULD BE TO --  
7 AS WE SAID, IF -- IN THIS SITUATION IT'S VERY  
8 UNHEALTHY.

9 MY BUSINESS STRATEGY IS IF THEY  
10 TOLD THE TRUTH, AND EVERYONE KNEW THE TRUTH, THEN  
11 I'D BE IN A MUCH BETTER POSITION TO RECOUP THEIR  
12 INVESTMENT.

13 Q. SO BASICALLY -- BASICALLY, YOU HAVE  
14 NO BUSINESS PLAN TO CHANGE THE MANAGEMENT OF THE  
15 COMPANY? YOU WANT TO STILL MAINTAIN THE  
16 RESPONSIBILITY OF KEEPING -- OF TRYING TO RETURN  
17 THEIR INVESTMENT?

18 A. YES.

19 Q. AND WHY DO YOU WANT TO DO THAT?

20 A. I THINK I'M ENTITLED TO DO THAT.

21 Q. BECAUSE SOME OF THE FUNDS FROM  
22 DIAMANTE DEL MAR WERE TRANSFERRED TO ENTITIES THAT  
23 YOU OWN OR CONTROL THAT WERE THEN USED TO  
24 FACILITATE THE PURCHASE OF THE CABO SAN LUCAS  
25 DEAL, WOULD YOU BE WILLING, ALONG WITH MR. KENNER,

0591

1 IF IT WAS EQUAL, TO GIVE UP SOME OF YOUR POINTS IN  
2 CABO SAN LUCAS IF IT WAS, YOU KNOW, EQUAL TO BOTH  
3 SIDES, SINCE YOU GUYS ARE THE MAJORITY OWNERS, IN  
4 ORDER FOR THE INVESTORS THAT INVESTED IN DIAMANTE  
5 DEL MAR TO HAVE SOME POSSIBILITY OF RECOVERING  
6 THEIR INVESTMENT?

7 A. JUST TO BE CLEAR --

8 Q. YEAH.

9 A. -- WHEN WE WERE HAVING THESE  
10 PROBLEMS WITH PHIL -- WHEN I WAS HAVING THESE  
11 PROBLEMS WITH PHIL KENNER, I WROTE A LONG E-MAIL.  
12 AND IN THAT E-MAIL I SUGGESTED THAT  
13 HE GIVE UP 10 PERCENT, I GIVE UP 10 PERCENT AND WE  
14 MAKE A DECISION TO NOT TAKE ANY PROFITS OUT OF  
15 EITHER PLACE UNTIL ALL THE INVESTORS ARE REPAID.

16 I NEVER GOT A RESPONSE FROM THAT  
17 E-MAIL. THAT WAS WHEN ALL OF THIS WAS GOING SOUTH  
18 IN JUNE -- MAY AND JUNE OF 2007.

19 Q. DID YOU PROVIDE THAT E-MAIL AS PART  
20 OF THE DISCOVERY RESPONSES? BECAUSE I WOULD LOVE  
21 TO SEE THAT E-MAIL.

22 A. I HOPE SO.

23 Q. OKAY. THERE WAS -- THERE WAS A  
24 TREMENDOUS -- THERE'S A TREMENDOUS AMOUNT OF --  
25 THERE WAS A -- THERE WAS A TREMENDOUS AMOUNT OF

0592

1 E-MAILS BETWEEN YOU AND TOMMY CONSTANTINE,  
2 ATTEMPTING TO SETTLE THIS MATTER.

3 AND ALL THE E-MAILS SEEMED VERY  
4 CORDIAL AND COURTEOUS BETWEEN YOU.

5 IS THAT A FAIR CHARACTERIZATION?

6 A. WHAT'S A FAIR CHARACTERIZATION IS  
7 THAT I'M OBVIOUSLY VERY NAIVE.

8 Q. WHY?

9 A. BECAUSE I TRUSTED TOMMY CONSTANTINE  
10 WAS WORKING FOR BOTH PHIL KENNER AND MYSELF, AND I  
11 TRUSTED WHAT HE SAID. AND WHEN HE ACTED AS MY  
12 FRIEND, I BELIEVED HIM.

13 Q. AND WHAT DID HE DO THAT MADE YOU  
14 BELIEVE THAT HE WASN'T ACTING AS YOUR FRIEND?

15 A. WELL, I'VE LEARNED THAT HE'S MADE  
16 VERY BAD COMMENTS ABOUT ME SINCE THE LEHMAN  
17 BANKRUPTCY, SO I'M SURE BEFORE THAT, TO LEHMAN  
18 BROTHERS AND TO DANSKE BANK, AMONG OTHER PEOPLE.

19 Q. IS THAT AFTER THE SETTLEMENT  
20 NEGOTIATIONS BROKE DOWN?

21 A. YES.

22 Q. AND DO YOU KNOW WHETHER OR NOT --  
23 DO YOU KNOW WHETHER OR NOT TOMMY CONSTANTINE WAS  
24 UPSET THAT THE -- THAT AFTER WORKING ON THIS WITH  
25 YOU FOR 18 MONTHS, THIS THING DIDN'T SETTLE?

0593

1 A. I -- I REALLY DON'T KNOW BECAUSE IT  
2 WASN'T OUR FAULT THAT IT DIDN'T SETTLE. PHIL  
3 DIDN'T SIGN IT.

4 SO AT THIS POINT I DON'T KNOW IF IT  
5 WAS ALL JUST A PLAN TO STALL THE PROJECT. I DON'T  
6 KNOW.

7 Q. WHY WOULD BE THE -- DO YOU HAVE ANY  
8 EVIDENCE THAT SOMEONE WANTED TO STALL THE PROJECT?

9 A. WELL, THEY MADE THESE CLAIMS FOR ME  
10 TO MISMANAGE, AND THEY PUT ME IN A VERY DIFFICULT  
11 POSITION TO MANAGE.

12 SO I LOOK BACK NOW, AFTER BEING, I  
13 THINK, NAIVE IN MY RELATIONSHIP WITH TOMMY  
14 CONSTANTINE, TO THINK THAT MAYBE THIS WAS JUST A  
15 STALL TO MAKE ME LOOK BAD.

16 Q. WHAT DID KENNER SPECIFICALLY SAY  
17 THAT WAS BAD ABOUT THE PROJECT?

18 A. I DIDN'T SAY KENNER. I SAID  
19 CONSTANTINE.

20 Q. YEAH. WHAT -- OH, BUT WHAT DID  
21 CONSTANTINE SPECIFICALLY SAY BAD ABOUT THE  
22 PROJECT?

23 A. HE JUST MADE COMMENTS THAT I  
24 MISMANAGED THE PROJECT. I WASN'T IN THE  
25 CONVERSATION. I JUST HEARD IT WAS VERY NEGATIVE

0594

1 TOWARDS ME.

2 Q. ISN'T IT TRUE THAT YOU WENT TO THE  
3 NEW YORK POST BEFORE PHIL KENNER OR  
4 MR. CONSTANTINE OR ANYBODY ELSE?

5 A. NO.

6 Q. NO?

7 A. NO.

8 Q. DIDN'T YOU RUN A STORY IN THE  
9 NEW YORK POST ABOUT TOMMY -- TOMMY CONSTANTINE?

10 A. NO.

11 Q. SO YOU DON'T KNOW ANYTHING -- JUST  
12 SO WE'RE VERY CLEAR ON THE RECORD, YOU DIDN'T TAKE  
13 PART IN ANY SORT OF PROVIDING ANY INFORMATION --  
14 YOU OR ANYONE ACTING ON YOUR BEHALF, TO PROVIDE  
15 INFORMATION TO THE NEW YORK POST REGARDING  
16 TOMMY CONSTANTINE?

17 A. NO.

18 Q. SO WHEN THE STORY CAME OUT ABOUT  
19 TOMMY CONSTANTINE, IT WAS A COMPLETE SURPRISE TO  
20 YOU?

21 A. I DIDN'T DO IT.

22 Q. I KNOW. I'M SAYING BUT YOU OR  
23 ANYBODY THAT YOU HAVE A PROFESSIONAL RELATIONSHIP  
24 WITH.

25 A. I CAN ONLY SPEAK FOR MYSELF.

0595

1 Q. WELL, I KNOW. BUT YOU'RE SPLITTING  
2 HAIRS.

3 A. I SAID I DON'T KNOW. I DIDN'T DO  
4 IT, AND I DON'T KNOW. HOW IS THAT?

5 Q. THAT'S FINE.

6 SO PRIOR TO THE STORY COMING OUT,  
7 YOU WEREN'T A PARTY TO ANY SORT OF E-MAILS OR  
8 ANYTHING THAT SUGGESTED THAT -- THAT WAS PROVIDING  
9 INFORMATION FOR A STORY ON TOMMY CONSTANTINE?

10 A. I DON'T BELIEVE SO.

11 Q. NOW, DID YOU ASSIST KRISTIE MYRICK  
12 IN -- IN ANY LITIGATION WITH PHIL KENNER?

13 MS. CROWTHER: OBJECTION.  
14 RELEVANCE.

15 MR. RICHARDS: RELEVANCE?

16 MS. CROWTHER: YEAH. RELEVANCE.

17 KENNER IS NOT A PARTY. MYRICK DOESN'T INVEST IN

18 ANY OF THE MEXICAN PROPERTIES.

19 MR. RICHARDS: WELL, SHE'S ALL OVER  
20 THESE E-MAILS.

21 MS. CROWTHER: I DON'T CARE THAT  
22 SHE'S ALL OVER THE E-MAILS. I AGREED TO GIVE YOU  
23 ALL OF THE COMMUNICATIONS BETWEEN PHIL AND KEN.  
24 THAT DOESN'T MAKE IT RELEVANT.

25 MR. RICHARDS: BUT RELEVANCE IS NOT  
0596

1 A PROPER OBJECTION. IT MAY LEAD ME TO SHOW -- IT  
2 WILL GO BACK -- IT'S ONE QUESTION. COME ON. IT'S  
3 NOT A LOT OF --

4 MS. CROWTHER: IT'S ONE QUESTION  
5 NOW. OKAY. AND I'M TELLING YOU THAT I'M LIMITING  
6 THE SCOPE OF THIS DEPOSITION TO WHAT IS BROADLY  
7 DEFINED AS RELEVANT.

8 MR. RICHARDS: WELL, IT'S NOT ONLY  
9 RELEVANCE. IT MAY BE IRRELEVANT, BUT IT COULD  
10 LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.

11 MS. CROWTHER: I THINK THE  
12 DEFINITION OF "RELEVANCE" IS ADMISSIBLE IN  
13 EVIDENCE OR LIKELY TO LEAD TO THE DISCOVERY OF  
14 ADMISSIBLE EVIDENCE.

15 QUESTIONS ABOUT KRISTIE MYRICK AND  
16 HER LAWSUIT AGAINST PHIL KENNER IS NOT LIKELY TO  
17 LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE AS TO  
18 THESE PLAINTIFFS AND THEIR INVESTMENTS IN MEXICAN  
19 PROPERTIES.

20 MR. RICHARDS: BUT PHIL KENNER IS  
21 THE MANAGING MEMBER OF THE 47 PERCENT OWNER. SO  
22 IF HE'S -- I'M JUST -- THE REASON WHY I BROUGHT IT  
23 UP IS BECAUSE HE WAS SAYING, WELL, HE DOESN'T KNOW  
24 WHY HE WAS ATTACKED.

25 AND WE BELIEVE THAT HE WAS

0597  
1 ASSISTING KRISTIE MYRICK IN HER LITIGATION WITH  
2 PHIL KENNER.

3 MS. CROWTHER: ALL THAT DOES IS  
4 SHOW THAT YOU HAD MOTIVE TO MALICIOUSLY ATTACK  
5 KEN JOWDY. IT HAS NOTHING TO DO WITH WHETHER HE  
6 DEFRAUDED THESE PLAYERS.

7 AND I'M NOT GOING TO LET YOU --  
8 (SPEAKING SIMULTANEOUSLY.)

9 MR. RICHARDS: NO. I'M USING IT IN  
10 RESPONSE TO THE CONTENTION THAT -- THAT KEN JOWDY  
11 IS SOME SORT OF INNOCENT BYSTANDER AND -- AND --  
12 AND THAT HE WAS DOING EXACTLY WHAT HE WAS  
13 COMPLAINING OF.

14 MS. CROWTHER: NO. YOUR LAWSUIT IS  
15 THAT HE MADE MISREPRESENTATIONS TO PARTICULAR

16 INDIVIDUALS ABOUT INVESTMENTS THAT THEY MADE.  
17 AND THIS MUD THAT YOU'RE TRYING TO  
18 THROW AT KEN HAS NOTHING TO DO WITH ANYTHING.  
19 AND IF YOU WANT TO USE IT TO ADMIT  
20 THAT YOU HAD ULTERIOR MOTIVES FOR WHY YOU WENT  
21 AFTER HIM, THAT'S YOUR DECISION.  
22 BUT IT IS NOT RELEVANT TO THIS  
23 LAWSUIT.  
24 MR. RICHARDS: I'M NOT TRYING TO  
25 THROW ANY MUD. I JUST ASKED HIM IF HE ASSISTED

0598

1 KRISTIE MYRICK.  
2 LET ME ASK. I'LL ASK A DIFFERENT  
3 QUESTION.  
4 MS. CROWTHER: NO.  
5 BY MR. RICHARDS:  
6 Q. WHO IS KRISTIE MYRICK?  
7 A. FORMER ASSISTANT TO PHIL, I  
8 BELIEVE.  
9 Q. AND HOW DO YOU KNOW?  
10 A. BECAUSE I KNOW WHEN PHIL WAS --  
11 WHEN SHE WAS WORKING FOR PHIL.  
12 Q. AND HAVE YOU EVER SPOKEN TO HER  
13 AFTER SHE STOPPED WORKING FOR PHIL?  
14 A. YES.  
15 Q. WHEN WAS THAT?  
16 A. SEVERAL TIMES.  
17 Q. AND WHAT DID SHE TELL YOU?  
18 MS. CROWTHER: OBJECTION. THERE'S  
19 NO FOUNDATION THAT THIS HAS ANYTHING TO DO WITH  
20 THE LAWSUIT.  
21 IF YOU LAY THAT FOUNDATION, YOU CAN  
22 ASK THE QUESTION. BUT THERE ISN'T ANY.  
23 BY MR. RICHARDS:  
24 Q. HAVE YOU EVER PAID KRISTIE MYRICK  
25 ANY MONEY?

0599

1 MS. CROWTHER: OBJECTION.  
2 THE DEPONENT: NO.  
3 MR. RICHARDS: NO? THAT'S  
4 OBJECTIONABLE?  
5 MS. CROWTHER: YES.  
6 BY MR. RICHARDS:  
7 Q. DID -- DID KRISTIE MYRICK EVER TELL  
8 YOU SHE WOULD ASSIST YOU IN HELPING YOU DEFEND MY  
9 LAWSUIT, THE ONE I FILED?  
10 A. WHICH ONE?  
11 Q. THE ONE -- THE ONE --  
12 A. THIS ONE HERE?  
13 Q. YEAH.

14 A. DID SHE EVER TELL ME SHE'D HELP ME?  
15 Q. WELL, DID YOU EVER -- DID YOU EVER  
16 CALL HER TO SEEK ASSISTANCE AFTER THIS LAWSUIT WAS  
17 FILED?

18 A. I CALLED HER TO SEE IF I CAN GET  
19 THE -- SOME NAMES AND ADDRESSES OF PEOPLE. AND  
20 SHE SAID SHE WOULD TRY TO HELP ME.

21 Q. AND DID SHE EVER TRY TO HELP YOU?

22 A. SHE GAVE ME THE NAME AND ADDRESS OF  
23 TWO PEOPLE.

24 Q. WHO IS THAT?

25 A. WELL, MR. LITMAN IS NOT IN THIS

0600

1 CASE ANYMORE; RIGHT?

2 Q. NO.

3 A. AND JOZEF STUMPEL.

4 Q. AND DID YOU CONTACT MR. STUMPEL?

5 A. I HAVEN'T YET.

6 Q. ISN'T THE REASON WHY YOU TESTIFIED  
7 IN THE NOLAN ARBITRATION IS BECAUSE YOU HAD AN  
8 INFORMATION-SHARING AGREEMENT WITH KRISTIE MYRICK  
9 AND MICHAEL MEEKS?

10 MS. CROWTHER: OBJECTION. ASKED  
11 AND ANSWERED.

12 THE DEPONENT: NO.

13 MR. RICHARDS: DO YOU WANT TO TAKE  
14 OUR BREAK NOW? IT'S, LIKE, 3:30.

15 MS. CROWTHER: UP TO YOU.

16 MR. RICHARDS: YEAH, I CAN TAKE A  
17 FIVE-MINUTE BREAK.

18 THE VIDEOGRAPHER: ALL RIGHT. OFF  
19 THE RECORD. WE'LL GO OFF VIDEOTAPE RECORD AT  
20 3:26 P.M. THAT WILL CONCLUDE TAPE NUMBER 2 OF  
21 VOLUME NUMBER II.

22 (WHEREUPON, A RECESS WAS HELD  
23 FROM 3:26 P.M. TO 3:50 P.M.)

24 THE VIDEOGRAPHER: AND WE'RE BACK  
25 ON THE VIDEOTAPE RECORD, BEGINNING TAPE NUMBER 3

0601

1 OF VOLUME NUMBER II, AT 3:50 P.M.

2 BY MR. RICHARDS:

3 Q. ON -- JUST ONE MORE QUESTION HERE  
4 ABOUT THE GENERAL LEDGER, AND THEN WE'LL GET OFF  
5 OF THIS SUBJECT.

6 I'M SHOWING YOU, FROM THE GENERAL  
7 LEDGER, WHICH IS ON PAGE 4990 -- THESE ARE ALL  
8 THESE AMEX CHARGES, WHICH GO ONTO THE NEXT PAGE,  
9 AND THEY -- AND THEY KEEP GOING UNTIL THERE'S A  
10 TOTAL OF 467,000 DOLLARS IN PAYMENTS TO AMEX, EVEN  
11 SOME AS RECENTLY AS, I GUESS, JANUARY 1ST OF 2009.



12 AND WHAT I'D LIKE TO KNOW IS WHERE  
13 DO I GET THE ACTUAL AMEX STATEMENTS TO SHOW WHAT  
14 THE AMEX CHARGES WERE?

15 A. I ASSUME THEY'RE IN THE OFFICE IN  
16 CONNECTICUT.

17 Q. DO YOU KNOW WHAT TYPE OF THINGS  
18 WERE CHARGED ON AN AMEX TO THE TUNE OF HALF A  
19 MILLION DOLLARS? YOU MUST HAVE A PLATINUM CARD BY  
20 NOW RIGHT -- A BLACK CARD, I MEAN.

21 A. I DON'T. IT WOULD BE VARIOUS  
22 THINGS, FROM FLIGHTS TO EQUIPMENT TO HOTELS.

23 Q. WELL, LET ME JUST ASK YOU: WHOSE  
24 CARD IS IT?

25 A. I BELIEVE BILL NAJAM HAS A CARD AND

0602

1 I HAVE A CARD.

2 Q. AND THE CARD IS TO YOU GUYS AS  
3 INDIVIDUALS?

4 A. I BELIEVE SO.

5 Q. SO THIS IS JUST WHAT YOUR -- YOUR  
6 AMEX -- LIKE THIS IS YOUR -- SO IT'S A CARD WITH  
7 YOU GUYS -- WHO'S THE PRIMARY ACCOUNT HOLDER ON  
8 THE CARD?

9 A. BILL NAJAM.

10 Q. AND THEN YOU'RE THE SECONDARY CARD?

11 A. I BELIEVE SO.

12 Q. AND THIS JUST PAYS THE AMEX  
13 CHARGES?

14 A. YES.

15 Q. ALL RIGHT. DO YOU -- DO YOU  
16 PRESENTLY, WHEN YOU HAVE AN AMEX CHARGE, DO YOU  
17 SUBMIT IT TO -- DO YOU SUBMIT YOUR BILL, OR DO  
18 JUST YOUR BILLS GO TO CONNECTICUT, AND THEN  
19 THEY'RE JUST PAID PRESENTLY FOR CABO SAN LUCAS?

20 A. IT DEPENDS. I SUBMIT EXPENSE  
21 REPORTS.

22 Q. OKAY. I'M GOING TO SHOW YOU NEXT,  
23 THIS IS JOWDY 653.

24 THIS IS A -- THIS IS AN E-MAIL THAT  
25 WAS SENT TO YOU. IT SAYS:

0603

1 "ROB CALLED TO TELL ME HE WAS  
2 OUT OF LINE. DUDE WAS  
3 MISUNDERSTANDING OF THE DOCS AND THE  
4 PLAYERS INVOLVED. HE SENDS HIS  
5 SINCEREST APOLOGIES."

6 AND THEN YOU MENTIONED THAT THEY  
7 ASKED FOR 18,000 A MONTH.

8 DO YOU KNOW WHAT YOU'RE REFERRING  
9 TO?

10 A. WELL, THAT'S AN E-MAIL FROM PHIL  
11 I'M NOT SURE WHAT HE'S REFERRING.

12 Q. WHAT ARE YOU REFERRING?

13 A. SYNTHESIS WAS A SALES AND MARKETING  
14 COMPANY. THEY MUST HAVE GIVEN US A PROPOSAL,  
15 WHERE THEY ASKED FOR 18,000 PER MONTH.

16 Q. NOW, WHEN YOU SAY YOU'RE NOT  
17 REFERRED -- YOU DON'T KNOW WHAT HE'S REFERRING TO,  
18 DO YOU THINK YOU KNEW AT THE TIME WHAT HE WAS  
19 REFERRING TO?

20 MS. CROWTHER: CALLS FOR  
21 SPECULATION. YOU CAN ALSO LET HIM SEE THE WHOLE  
22 E-MAIL.

23 THE DEPONENT: YEAH. MAYBE IF YOU  
24 GIVE ME ...  
25 ///

0604

1 BY MR. RICHARDS:

2 Q. ALL RIGHT. LET'S START AT THE  
3 BOTTOM.

4 A. OKAY. NO, NO, NO. NOW I KNOW. IF  
5 I CAN GET TO IT.

6 THAT'S ROB MADIA, WHO WAS AN  
7 ATTORNEY FOR PHIL KENNER. AND IT LOOKS LIKE WE  
8 ASKED HIM TO GIVE AN OPINION LETTER.

9 AND BASED ON THAT, LOOKS LIKE HE  
10 THINKS FERNANDO WAS GETTING 2 1/2 PERCENT OF REAL  
11 ESTATE SALES. AND FERNANDO WAS A LAWYER, SO IT  
12 LOOKS LIKE ROB WAS THINKING THAT HE WOULD GET THAT  
13 SOMEHOW.

14 I REMEMBER HE HAD SOME  
15 MISCONCEPTION OF WHAT HIS FEE SHOULD BE AND  
16 THOUGHT IT SHOULD BE IN LIGHT OF WHAT FERNANDO WAS  
17 GETTING, BUT I THINK HE MADE A MISTAKE. IT WASN'T  
18 OUR ATTORNEY. IT WAS SYNTHESIS MARKETING. AT  
19 LEAST THAT'S WHAT I'M ...

20 Q. THIS IS ON THE OFFERING MEMORANDUM  
21 FROM WHICH -- WHICH COMPANY?

22 A. I DON'T THINK THERE'S AN  
23 OFFERING -- I DON'T BELIEVE THAT THEY'RE OFFERING  
24 DOCUMENTS THAT WE'RE TALKING ABOUT HERE.

25 Q. WHAT DOCUMENTS ARE THESE?

0605

1 A. I DON'T KNOW. I JUST THINK HE'S --

2 Q. DIFFERENT DOCUMENTS?

3 A. -- MADE A MISTAKE.

4 Q. ALL RIGHT. ON JOWDY 655, IT STATES

5 THAT:

6 "WITH RESPECT TO CAREY  
7 (PHONETICALLY) AND CHRIS, MANY THANKS

8 FOR THE PRESENTATIONS. WE'LL BE  
9 PLEASED AND ABLE TO ASSIST IN  
10 PROVIDING INSURANCE CAPACITY TO  
11 PROTECT THESE PROJECTS."

12 WHAT'S THIS ABOUT?

13 A. APPARENTLY ABOUT INSURANCE. I'M  
14 NOT SURE IF IT'S -- IT SAYS, "HAWAII PROJECT,"  
15 SO --

16 Q. THAT PROJECT, DID THAT EVER COME TO  
17 FRUITION?

18 A. THE HAWAII PROJECT?

19 Q. YEAH.

20 A. WELL, IT'S -- PHIL KENNER WAS --  
21 IT'S HIS PROJECT, BUT I --

22 Q. WERE YOU GOING TO BE A PARTY TO  
23 THAT IN SOME WAY?

24 A. I AM A SMALL PARTY TO THAT, YES.

25 Q. WHAT PART OF IT?

0606

1 A. I BELIEVE THERE IS A COMPANY CALLED  
2 J & N DEVELOPMENT OR J & N THAT HAS 5 PERCENT, I  
3 BELIEVE, OF NAHALAHU (PHONETICALLY) VENTURES.

4 Q. OKAY. THIS IS A SPREADSHEET,  
5 DIAMANTE PHASE 1 CASH FLOW PROJECTION SUMMARY  
6 SHEET.

7 DO YOU KNOW WHAT THIS IS?

8 A. LOOKS LIKE A PROJECTED -- SOME CASH  
9 FLOW.

10 Q. DID YOU DO -- DID YOU DO STUFF LIKE  
11 THIS REGULARLY?

12 A. WE DID A LOT OF THINGS LIKE THIS,  
13 YES.

14 Q. SO IF CASH FLOW WAS SOMETHING THAT  
15 WAS IMPORTANT TO YOU, DID YOU -- DID YOU HAVE  
16 ANY -- DID YOU DO ANY CASH FLOW PROJECTION -- IF  
17 YOU REMEMBER, DID YOU DO ANY CASH FLOW PROJECTIONS  
18 AT THE TIME AFTER THE LOAN CAME IN FOR K.S.I.?

19 A. AFTER?

20 Q. OR RIGHT BEFORE, YOU KNOW, ON THAT  
21 LOAN.

22 A. I'M NOT SURE.

23 Q. DO YOU KNOW WHO MADE THESE CASH  
24 FLOW PROJECTIONS?

25 A. I'M SURE IT WAS A GROUP EFFORT.

0607

1 Q. WHAT TYPE OF INSURANCE -- I'M  
2 SHOWING THIS ON 6668.

3 WHAT TYPE OF INSURANCE ARE WE  
4 REFERRING -- IS THIS FOR HAWAII OR MEXICO, THIS  
5 E-MAIL, DOES IT REFER TO AS FAR AS INSURANCE?

6 A. THE SUBJECT IS HAWAII PROJECT, SO I  
7 ASSUME IT'S HAWAII.

8 Q. ON 670, YOU SENT AN E-MAIL TO PHIL  
9 SAYING:

10 "ANY NEW NEWS? DID YOU EVER  
11 TALK TO JEFF LITNER AGAIN?"  
12 WHAT'S THAT? AGAIN, AT 5:15 IN THE  
13 MORNING, SHOWING YOUR LONG WORK HOURS.

14 A. I DON'T KNOW.

15 Q. YOU DON'T KNOW WHO JOE LITNER IS?

16 A. HE MAY HAVE BEEN A POSSIBLE FUNDING  
17 SOURCE OR CAPITAL GUY. I DON'T KNOW.

18 Q. OKAY. ON 672, IT'S -- IS THIS --  
19 THIS IS AN E-MAIL FROM AL GUTIERREZ TO YOU.  
20 WHAT'S HE WRITING ABOUT WITH RESPECT TO THIS  
21 INVESTMENT?

22 A. LOOKS LIKE HE HAS A GROUP INTEREST  
23 IN HAWAII. AL WAS SOMEBODY I KNEW FROM NEW YORK.  
24 AND HE WAS ACTING AS A BROKER, AND  
25 I WAS KIND OF THE MIDDLEMAN, HELPING PHIL TRY TO

0608  
1 GET FUNDING IN HAWAII. SO AL IS ACTING AS BROKER,  
2 I BELIEVE, AND I WAS JUST TRYING TO HELP OUT.

3 Q. WHY DID YOU SPEND SO MUCH TIME ON  
4 THIS HAWAII DEAL?

5 A. WELL, I MEAN, PHIL WAS TRYING TO  
6 GET THIS FUNDED AT THE SAME TIME. HE HAD A LOT  
7 GOING ON AT THIS TIME.

8 WE ARE TRYING TO GET THE EL ROSARIO  
9 PROJECT FUNDED. WE WERE TRYING TO GET THE DOWN  
10 PAYMENT DONE FOR -- FOR CABO. AND WE'D HELP HIM  
11 IN ANY WAY THAT WE COULD. I THOUGHT IT WOULD BE  
12 BENEFICIAL IF HE WAS SUCCESSFUL.

13 Q. HE SAYS, ON 673:

14 "KJ, PLEASE FOLLOW UP WITH ALAN  
15 STANDON TO GET SOMETHING DONE WITH  
16 THESE GUYS. IT WOULD BE A HUGE  
17 RELIEF TO CHRIS, ME AND US."

18 WHO'S AL?

19 A. SAME AL AS IN THE OTHER E-MAILS.

20 Q. SO THIS IS ALL -- THESE E-MAILS ARE  
21 ALL JUST BASICALLY E-MAILS DOCUMENTING THAT YOU  
22 AND PHIL WORKED HAND IN HAND ON TRYING TO GET  
23 CAPITAL FOR THE HAWAII PROJECT?

24 MS. CROWTHER: OBJECTION. VAGUE AS  
25 TO THE TERM "THESE E-MAILS."

0609  
1 BY MR. RICHARDS:

2 Q. THE LAST FEW E-MAILS I'M SHOWING  
3 YOU.

4 IT SEEMS TO ME THAT YOU AND PHIL  
5 ONLY DIDN'T WORK ON MEXICAN PROJECTS, YOU ALSO  
6 WERE TRYING -- YOU WORKED TOGETHER ON A LOT OF  
7 PROJECTS.

8 A. WELL, AT THIS TIME PHIL WAS TRYING  
9 TO GET A HARD MONEY LOAN IN HAWAII. AND I BELIEVE  
10 THAT'S HOW HE WAS GOING TO FUND WHAT HE WAS  
11 SUPPOSED TO FUND IN CABO.

12 SO LOOKING AT THIS, OBVIOUSLY IT  
13 WOULD BE IN MY BEST INTEREST TO HELP HIM WITH  
14 WHATEVER DOCUMENTATION HE NEEDED TO DO THAT.

15 Q. FROM -- FROM 2002 TO THE TIME THAT  
16 YOU -- THAT PHIL GOT TERMINATED AS THE DIRECTOR OF  
17 MARKETING -- WELL, YOU TESTIFIED YESTERDAY THAT  
18 YOU FIRST HAD LIKE A PROBLEM IN -- WAS IT '06 OR  
19 '07?

20 A. I BELIEVE THAT THE FIRST ISSUES OR  
21 MAJOR ISSUES WERE IN '06, AT THE END OF '06.  
22 OCTOBER OF '06.

23 Q. OKAY. SO PRIOR TO OCTOBER '06, DID  
24 YOU HAVE ANY PROBLEMS WORKING WITH PHIL KENNER?

25 A. NOT REALLY.

0610

1 Q. AND DID YOU -- IT SEEMS TO ME THAT  
2 DURING THAT TIME, YOU WERE SUCCESSFUL IN THAT PHIL  
3 WAS SUCCESSFUL IN INTRODUCING LEHMANS TO THE CABO  
4 PROJECT AND ALSO GOT THEM TO FUND THIS HAWAII  
5 PROJECT EVENTUALLY.

6 ISN'T THAT CORRECT?

7 A. WELL, I THINK THAT HE WAS  
8 SUCCESSFUL IN INTRODUCING ME TO A PERSON WHO  
9 INTRODUCED ME TO LEHMAN.

10 UNFORTUNATELY, HE HAD A BAD  
11 EXPERIENCE WITH LEHMAN SOMEWHERE IN, I BELIEVE  
12 2005.

13 I DEVELOPED THE RELATIONSHIP WITH  
14 LEHMAN. WHEN IT CAME TIME TO DO THE CABO PROJECT,  
15 THEY GOT IT FUNDED. THEY STILL DID NOT WANT TO  
16 WORK WITH PHIL.

17 WHEN THE CABO PROJECT DID GET  
18 FUNDED ABOUT A WEEK LATER, I ASKED FOR THEM TO  
19 TALK TO PHIL AND TO SEE IF THEY COULD PUT ASIDE  
20 THEIR DIFFERENCES AND FUND THE HAWAII PROJECT FOR  
21 PHIL, AND THEY ENDED UP DOING THAT. I THINK THEY  
22 CLOSED THAT IN AUGUST.

23 Q. PRIOR TO 2003, HAD YOU BEEN  
24 INVOLVED IN ANY LAWSUITS PREVIOUSLY?

25 A. I DON'T REMEMBER.

0611

1 Q. DID KENNER HAVE A LOT OF SALES

2 READY TO GO IN DECEMBER OF 2006?

3 A. I DON'T KNOW.

4 Q. WAS THERE A PROBLEM WITH YOU BEING  
5 ABLE TO PROVIDE SALES PACKAGES TO KENNER TO MAKE  
6 SALES IN 2006, YOU AND NAJAM?

7 A. WHAT'S A SALES PACKAGE? WE NEVER  
8 WORKED -- WE WORKED ON GETTING HIM WHAT HE NEEDED.

9 I KNOW THAT WE GOT HIM  
10 DOCUMENTATION THAT -- I BELIEVE WE GOT HIM THE  
11 DOCUMENTATION THAT HE NEEDED.

12 Q. DO YOU KNOW ANYBODY FROM AMERICAN  
13 FUNDING GROUP?

14 A. I'M NOT SURE. I DON'T -- I DON'T  
15 KNOW.

16 Q. THERE'S A LETTER THAT'S AT 686 THAT  
17 WAS GOING TO GIVE YOU A CREDIT FACILITY FOR  
18 230 MILLION DOLLARS.

19 HOW DID YOU COME INTO CONTACT WITH  
20 AMERICAN FUNDING GROUP?

21 A. I DON'T KNOW.

22 Q. ON JUNE 1ST, 2005, THERE WAS A  
23 SUMMARY APPRAISAL REPORT. AND THAT'S AT PAGES 693  
24 OF THE PRODUCTION.

25 AND IN THE REPORT, THERE'S A LETTER

0612

1 TO YOU THAT OUTLINES THAT THE PROPERTY IS WORTH  
2 92 MILLION DOLLARS.

3 I'LL SHOW YOU THE PAGE. IT'S ON  
4 PAGE 695. AND THAT'S IN JUNE 1ST OF '05.

5 MS. CROWTHER: WHICH PROPERTY?

6 MR. RICHARDS: THE CABO -- CABO SAN  
7 LUCAS PROPERTY.

8 BY MR. RICHARDS:

9 Q. IS THAT -- DO YOU REMEMBER GETTING  
10 THAT REPORT?

11 A. YES.

12 Q. AND DID YOU AGREE WITH THAT REPORT?

13 A. GENERALLY, YES.

14 Q. AND ARE YOU AWARE AS TO, IN THAT  
15 REPORT, IF IT MADE ANY RECOMMENDATIONS, IS -- IF  
16 IT MADE ANY RECOMMENDATIONS AS TO WHEN IT THOUGHT  
17 YOU WOULD NEED TO GET THE LAND DEVELOPED?

18 A. I'D HAVE TO READ THE REPORT.

19 Q. WHAT -- WHEN THIS REPORT WAS  
20 CREATED IN JUNE OF '05, WHAT'S CHANGED ON THE  
21 PARCELS SINCE THIS REPORT WAS CREATED? NOT IN THE  
22 PARCEL. I MEAN IN THE DEVELOPMENT. WHAT'S BEEN  
23 IMPROVED SINCE THIS REPORT WAS CREATED?

24 A. WE HAVE ENTITLEMENTS ON THE  
25 PROPERTY. WE HAVE INFRASTRUCTURE. WE HAVE A GOLF

0613

1 COURSE. DESALINATION PLANT. STRUCTURES.

2 Q. HAVE YOU GOTTEN ANY ESTIMATES OF  
3 WHAT IT WOULD COST TO BRING INFRASTRUCTURE TO THE  
4 100 -- HOW MANY TOTAL SITES ARE THERE? 135? 136?  
5 APPROXIMATELY.

6 A. YEAH. 7 -- 66 AND 70.

7 Q. 66 AND 70. SO 136.

8 (NO AUDIBLE RESPONSE BY DEPONENT.)

9 BY MR. RICHARDS:

10 Q. HOW MANY -- HOW MANY -- DO YOU KNOW  
11 HOW MUCH IT WILL COST TO BRING INFRASTRUCTURE TO  
12 THOSE SITES?

13 A. I BELIEVE TO THE FIRST 66, A LITTLE  
14 BIT LESS THAN 2 MILLION DOLLARS. AND TO THE OTHER  
15 78, I BELIEVE 3 1/2 TO 4 MILLION DOLLARS, BUT I'M  
16 NOT SURE EXACTLY.

17 WE'RE JUST IN THE PROCESS OF  
18 GETTING SOME OTHER ESTIMATES.

19 Q. OKAY. I'M GOING TO SHOW YOU  
20 PAGE 755. THIS IS A LETTER FROM THE PALMS CASINO  
21 TO YOU THAT SAYS THAT THEY'RE GIVING YOU TITLE  
22 DOCUMENTS TO BUY UNITS IN THE PALMS CASINO.

23 DO YOU REMEMBER THAT TRANSACTION?

24 A. I REMEMBER WHAT HAPPENED, YES.

25 Q. OKAY. WELL, WHERE DID YOU GET THE

0614

1 MONEY TO BUY THOSE UNITS?

2 A. I DIDN'T BUY THE UNITS.

3 Q. DO YOU KNOW WHY THEY'RE SENDING  
4 TITLE DOCUMENTS TO YOU?

5 A. BECAUSE I HAD A CONTRACT TO BUY THE  
6 UNITS.

7 Q. OKAY. BUT YOU DIDN'T HAVE TO PUT  
8 UP ANY MONEY?

9 A. I DID.

10 Q. HOW MUCH DID YOU PUT UP?

11 A. I'M NOT SURE THE TOTAL AMOUNT.

12 Q. WELL, I THINK THEY LIST THEM ON  
13 HERE.

14 WAS THAT -- IS THAT -- IS THAT THE  
15 DEPOSIT?

16 A. THE FIRST DEPOSIT CAME FROM  
17 PHIL KENNER, AND THE SECOND DEPOSIT CAME FROM  
18 GLEN MURRAY THROUGH PHIL KENNER.

19 Q. OKAY. AND IS THERE -- THERE'S ONLY  
20 TWO DEPOSITS?

21 A. TWO. ONE WAS A CERTAIN AMOUNT AND  
22 THE OTHER DEPOSIT WAS A CERTAIN AMOUNT.

23 Q. DIDN'T THE FIRST 150,000 COME FROM

24 T.L.J. MANAGEMENT?

25 A. IT WAS A CHECK FROM T.L.J.

0615

1 MANAGEMENT, YES.

2 Q. SO ARE YOU SUGGESTING THAT A CHECK  
3 FROM T.L.J. MANAGEMENT IS SOMEBODY ELSE'S MONEY?

4 A. T.L.J. MANAGEMENT WROTE THE CHECK,  
5 YES.

6 Q. AND -- AND PALM SENT THE MONEY TO  
7 THE PRINCIPAL AT T.L.J. MANAGEMENT; RIGHT? I MEAN  
8 SENT THE TITLE DOCUMENTS.

9 A. SENT IT TO ME, YES.

10 Q. AND WHAT -- WERE YOU SUPPOSED TO  
11 GET TITLE IN THE PROPERTY?

12 A. IF I PURCHASED THE PROPERTY, I  
13 BELIEVE SO.

14 Q. AND WHAT -- WHAT ENDED UP  
15 HAPPENING?

16 A. THE -- CAN I TELL THE WHOLE STORY?

17 Q. I WANT YOU TO, YEAH. THAT'S WHY  
18 I'M ASKING YOU. I DON'T KNOW THE STORY.

19 (SPEAKING SIMULTANEOUSLY.)

20 THE DEPONENT: ARE YOU ASKING ME A  
21 QUESTION, SO THERE'S A LONG STORY. AND THERE'S A  
22 LONG LITIGATION THAT HAS TO DO WITH THIS  
23 TRANSACTION.

24 SO IF I -- YOU WANT ME TO TELL --  
25 YOU'RE ASKING QUESTIONS ABOUT IT, SO IT'S UNDER

0616

1 EXISTING LITIGATION IN LAS VEGAS. SO THERE'S A  
2 WHOLE DOCUMENTED STORY.

3 I CAN SEND YOU THE TRANSCRIPTS AT  
4 THE SAME TIME.  
5 BY MR. RICHARDS:

6 Q. NO, NO. I JUST WANT YOU TO TELL ME  
7 THE STORY.

8 A. PHIL KENNER HAD, I BELIEVE, SEVERAL  
9 PALMS UNITS UNDER CONTRACT. HE CAME TO ME IN --  
10 I'M NOT SURE IF IT WAS FEBRUARY OR MARCH OR APRIL  
11 OF '05 SAID THAT HE HAD THREE UNITS UNDER  
12 CONTRACT. HE COULDN'T GET ANY MORE.

13 THAT IT WAS A GREAT DEAL. HE  
14 THOUGHT I SHOULD GO UNDER CONTRACT FOR THREE  
15 UNITS.

16 I TOLD HIM I DIDN'T HAVE THE MONEY.  
17 HE SAID NOT TO WORRY ABOUT THE MONEY. HE WOULD  
18 PUT THE MONEY UP. I JUST HAD TO PUT IT IN MY  
19 NAME.

20 I SAID, "OKAY."

21 PUT THE FIRST INITIAL DEPOSIT UP OF



22 150,000 DOLLARS. THEN IT CAME TIME IN AUGUST FOR  
23 THE REMAINING DEPOSIT TO BE PUT UP. IT WAS AT THE  
24 SAME TIME THAT, AS YOU SAW, ALL OF THE OTHER  
25 THINGS THAT WERE HAPPENING AS FAR AS THE PRESSURE

0617

1 OF THE HAWAII PROPERTY, THE PRESSURE OF THE CABO  
2 CLOSING, SO PHIL DIDN'T HAVE THE FUNDS TO DO THAT.

3 HE BORROWED THE FUNDS FROM  
4 GLEN MURRAY. WE DIDN'T GET THEM IN TIME.

5 SO INSTEAD OF HAVING THE FUNDS SENT  
6 BACK TO GLEN MURRAY, HE HAD THE FUNDS SENT TO BAJA  
7 DEVELOPMENT.

8 BAJA DEVELOPMENT SPENT -- SENT  
9 500,000 DOLLARS TO PROPIEADAES D.D.M. AND THE  
10 OTHER 400,000 DOLLARS WAS PUT AS A DOWN PAYMENT ON  
11 THE LAS VEGAS HOUSE.

12 Q. DID THE FUNDS EVER -- IS THAT THE  
13 RETURN OF THE DEPOSIT, YOU SAY?

14 A. YES.

15 Q. DID THOSE FUNDS EVER GO BACK TO  
16 PHIL KENNER?

17 A. EVENTUALLY SOME OF THEM DID, YES.

18 Q. AND HOW -- TELL ME SPECIFICALLY HOW  
19 THEY WENT BACK TO PHIL KENNER.

20 A. PHIL KENNER ARRANGED FOR A  
21 REFINANCING OF THE HOUSE IN LAS VEGAS AND MONEY  
22 WAS SENT TO HIM.

23 Q. HOW MUCH WAS SENT TO HIM --

24 A. I DON'T KNOW.

25 (SPEAKING SIMULTANEOUSLY.)

0618

1 BY MR. RICHARDS:

2 Q. YOU DON'T KNOW HOW MUCH?

3 A. I DON'T KNOW EXACTLY, NO.

4 Q. WAS KENNER ON THE NEW MORTGAGE  
5 AFTER THE REFINANCE?

6 A. NO.

7 Q. AND WHY -- AND TELL ME WHY -- WHY  
8 IS THERE LITIGATION OVER THAT TRANSACTION?

9 A. GLEN MURRAY ORIGINALLY SUED ME,  
10 EVEN THOUGH I NEVER TALKED TO GLEN MURRAY. HE  
11 SAID THAT HE WAS TRYING TO GET THE MONEY BACK FOR  
12 FOUR YEARS.

13 PHIL KENNER NEVER ALLOWED HIM TO  
14 TALK TO ME. I NEVER HAD ONE CONVERSATION WITH HIM  
15 ABOUT THIS UNTIL THE LAWSUIT.

16 WE HAVE NAMED PHIL AS A  
17 CO-DEFENDANT, I BELIEVE. I DON'T KNOW WHAT  
18 EXACTLY THE PROCESS OF THAT IS OR WHERE IT IS  
19 RIGHT NOW, WHERE IT SITS, BUT IT'S STILL IN

20 LITIGATION.

21 Q. WHAT IS GLEN MURRAY -- WHAT DOES  
22 GLEN MURRAY WANT FROM YOU?

23 A. GLEN MURRAY HAS -- HE WANTS --  
24 WELL, HE'S SUING ME FOR 791,000 DOLLARS, I  
25 BELIEVE.

0619

1 Q. 791,000?

2 A. YES.

3 Q. AND WHY DID GLEN MURRAY LOSE  
4 791,000?

5 MS. CROWTHER: OBJECTION. ASSUMES  
6 FACTS.

7 BY MR. RICHARDS:

8 Q. OKAY. DO YOU KNOW WHY GLEN MURRAY  
9 IS CLAIMING YOU OWE HIM 791,000?

10 A. BECAUSE HE'S THE PERSON THAT PHIL  
11 BORROWED THE MONEY FROM.

12 Q. IF -- IF PHIL GOT MONEY OUT OF THE  
13 REFINANCE, WHY WOULDN'T HE BE ON THE LOAN OR ON  
14 TITLE?

15 A. HE ARRANGED FOR THE REFINANCING.  
16 THE FIRST REFINANCE HE DID, THERE WAS A CHECK  
17 WRITTEN TO HIM BEFORE THE MONEY HIT  
18 MARK THALMANN'S BANK. AND MARK THALMANN IS THE  
19 ONLY ONE THAT'S ON THE LOAN. AND MARK THALMANN  
20 AND I WERE ON THE TITLE.

21 Q. WERE YOU AWARE THAT THIS WAS  
22 OCCURRING?

23 A. YES.

24 Q. AND WHY DIDN'T YOU OBJECT TO IT?

25 A. THERE'S NO REASON TO OBJECT TO IT.

0620

1 Q. IS THAT BECAUSE IT WAS HIS MONEY  
2 THAT INITIALLY WAS FOR THE DEPOSIT THAT WAS  
3 REFUNDED FROM THE PALMS?

4 A. PARTIALLY, YES, THAT WAS THE  
5 REASON.

6 Q. WAS THERE ANY OTHER REASON?

7 A. I DON'T KNOW.

8 Q. DID -- HOW COME T.L.J. MANAGEMENT  
9 DIDN'T ASK FOR A RETURN OF ITS 150,000?

10 A. I DON'T KNOW.

11 Q. WAS THAT BECAUSE IT WASN'T OWED THE  
12 150,000?

13 A. I'D HAVE TO LOOK AT ALL THE  
14 CIRCUMSTANCES, THE RECORDS AT THE TIME.

15 Q. DIDN'T GLEN MURRAY LOAN YOU SOME  
16 MONEY, AND THAT'S WHAT HE WAS SUING YOU FOR?

17 A. I NEVER ASKED GLEN MURRAY TO LOAN

18 ME MONEY. GLEN MURRAY DEPOSITED MONEY IN AN  
19 ESCROW, AS PER PHIL'S INSTRUCTIONS.

20 Q. FOR PROPERTY THAT WAS -- I'M JUST  
21 TRYING TO UNDERSTAND.

22 HOW DID GLEN MURRAY LOSE MONEY? I  
23 MISSED THAT.

24 A. HE DEPOSITED MONEY, AS PER PHIL'S  
25 INSTRUCTIONS.

0621

1 Q. YEAH. INTO AN ACCOUNT?

2 A. INTO AN ESCROW ACCOUNT.

3 Q. THAT WAS ENTITLED IN YOUR NAME?

4 A. YES.

5 Q. I GOT YOU.

6 AND THEN -- AND THEN THE MONEY CAME  
7 BACK TO YOU?

8 A. CAME BACK TO BAJA DEVELOPMENT,  
9 UNDER PHIL'S DIRECTION AND 500,000 WENT TO  
10 PROPIEADAES D.D.M. BECAUSE WE WERE UNDER SEVERE  
11 PRESSURE.

12 PHIL WAS SUPPOSED TO RAISE THE  
13 MONEY FOR THE CABO PROJECT. I WASN'T SUPPOSED TO  
14 RAISE ANY OF THE MONEY FOR THE CABO PROJECT. I  
15 THINK THAT'S BEEN ESTABLISHED.

16 Q. YES.

17 A. OKAY. SO WHEN 500,000 WENT TO BAJA  
18 DEVELOPMENT TO PROPIEADAES D.D.M, THEN DIRECTLY TO  
19 THE SELLER, WHO WAS UNDER THE DIRECTION OF PHIL  
20 KENNER, BECAUSE HE WAS HAVING DIFFICULTY RAISING  
21 THIS MONEY.

22 AND THERE WAS A PROBLEM WHERE WE  
23 WERE ABOUT AT THE END OF THE ROPE WITH THE SELLER,  
24 AND HE COULD HAVE, AT ANY TIME, TAKEN THE FULL  
25 DEPOSIT.

0622

1 Q. I KNOW.

2 A. SO --

3 Q. THAT WAS WHEN YOU SAID EVERY  
4 PAYMENT WAS HARD MONEY COMING IN?

5 A. CONTACTUALLY.

6 Q. RIGHT. I GOT YOU. BUT WHY DID --  
7 WHAT -- I'M NOT UNDERSTANDING WHAT GLEN MURRAY IS  
8 CLAIMING WENT WRONG.

9 IS HE SAYING THAT YOU SHOULD HAVE  
10 REFUNDED THE DEPOSIT TO HIM BECAUSE HE'S THE GUY  
11 THAT PAID YOU?

12 A. I'M NOT SURE WHAT PHIL SAID TO  
13 GLEN MURRAY.

14 Q. RIGHT.

15 A. BUT IT'S GLEN MURRAY'S BELIEF, AND

16 HE SUED ME, BECAUSE HE THINKS THAT I OWE THE  
17 MONEY. AND WE'RE IN LITIGATION NOW BECAUSE I SAID  
18 I DON'T OWE THE MONEY.

19 Q. OKAY. AND WHO'S PAYING THOSE LEGAL  
20 FEES?

21 A. FOR ME?

22 Q. YEAH.

23 A. I BELIEVE -- I'M NOT SURE. I  
24 BELIEVE I AM. I DON'T KNOW.

25 Q. YOU DON'T KNOW WHO'S PAYING YOUR

0623

1 LAWYER?

2 A. UNFORTUNATELY, I HAVE A LOT OF  
3 LAWYERS AND A LOT OF LEGAL FEES.

4 Q. WELL, ARE -- IS CABO SAN LUCAS  
5 PAYING YOUR FEES?

6 A. MOST LIKELY, THEY'RE PAYING SOME OF  
7 IT, YES.

8 Q. AND WHAT DOES THAT HAVE TO DO  
9 WITH -- WHAT DOES THAT LAWSUIT, THIS REAL PROPERTY  
10 TRANSACTION IN NEVADA, HAVE TO DO WITH THE  
11 OPERATION OF CABO SAN LUCAS?

12 A. 500,000 DOLLARS WENT TO THE  
13 PURCHASE OF THE PROPERTY.

14 Q. FROM WHERE?

15 A. FROM PROPIEADAES D.D.M. TO THE  
16 PURCHASE OF THE PROPERTY. THE MONEY THAT HE'S  
17 SUING ME FOR, 500,000 DOLLARS OF IT WENT TO THE  
18 PURCHASE OF THE PROPERTY.

19 Q. NO, NO, NO. I UNDERSTAND THAT  
20 THAT -- THAT GLEN MURRAY WIRED IN 780, AND THEN  
21 500 WENT TO PROPIEADAES AND 280 TO BAJA  
22 DEVELOPMENT; IS THAT RIGHT?

23 A. NO.

24 Q. 500 WENT TO PROPIEADAES. AND WHERE  
25 DID THE BALANCE GO?

0624

1 A. THE WHOLE THING WENT TO BAJA  
2 DEVELOPMENT. 500 TO PROPIEADAES D.D.M. AND THEN  
3 TO THE SELLER.

4 Q. WAS ALL -- THEN -- TO QUOTE THE  
5 GREAT ROBYN CROWTHER, ONCE THE MONEY GOES TO BAJA  
6 DEVELOPMENT, IT DOESN'T REALLY MATTER HOW THEY  
7 SPENT IT.

8 ALL -- ALL MR. MURRAY KNOWS IS THAT  
9 HE WIRED MONEY INTO AN ESCROW, AND THEN THE MONEY  
10 WENT TO YOUR COMPANY?

11 A. BUT ALL I KNOW IS PHIL WAS SUPPOSED  
12 TO PUT UP ALL THE MONEY FOR THE CABO PROJECT. SO  
13 IF I'M HAVING TO INCUR EXPENSES FOR 500,000 THAT

14 WENT INTO THE DIAMANTE CABO SAN LUCAS, I THINK  
15 IT'S LEGITIMATE THAT -- I THINK IT'S FAIR THAT THE  
16 CABO PROJECT IS PAID SOME OF THOSE EXPENSES.

17 Q. SO YOU'RE SAYING THAT -- THAT --  
18 THAT AS A MANAGER, YOU MADE THE DECISION TO HAVE  
19 THIS LITIGATION PAID FOR BY THE COMPANY BECAUSE  
20 THIS MONEY THAT'S THE SUBJECT OF LITIGATION WAS  
21 ULTIMATELY USED TO PURCHASE THE CABO PROPERTY? IS  
22 THAT THE RATIONALE?

23 A. YES.

24 Q. ALL RIGHT. THIS IS MONEY THAT  
25 WENT -- THAT NEVER TOUCHED -- THIS IS MONEY THAT

0625

1 NEVER TOUCHED PHIL KENNER'S HANDS; IS THAT  
2 CORRECT?

3 A. YES.

4 Q. ALL RIGHT. I GOT IT NOW. I JUST  
5 WANT TO UNDERSTAND THE POSITION.

6 A. NEVER TOUCHED HIS ACCOUNT.

7 Q. RIGHT. YEAH. THIS IS MONEY THAT  
8 MURRAY WIRED --

9 A. EVENTUALLY, IT DID. LET ME BE  
10 CLEAR. SO EVENTUALLY WE SAID WE PAID BACK A  
11 PORTION OF IT, SO JUST TO BE CLEAR.

12 Q. YOU MEAN OUT OF THE REFINANCE?

13 A. YES.

14 Q. BUT YOU DON'T KNOW HOW MUCH?

15 A. I DON'T KNOW EXACTLY.

16 MR. RICHARDS: OKAY. WHAT WAS THE  
17 LAST NUMBER THAT I GAVE THAT I WAS ON?

18 MS. CROWTHER: 755.

19 MR. RICHARDS: OH, THANKS.

20 BY MR. RICHARDS:

21 Q. WHO'S REX VANCE?

22 A. I DON'T KNOW.

23 Q. DO YOU KNOW WHO RESULTS FUNDING IS?

24 A. NO.

25 Q. IT'S -- LET ME JUST SHOW YOU 762

0626

1 REAL QUICK.

2 IT'S -- IT'S -- WAS PHIL KENNER  
3 PROVIDING YOU ALL OF THESE LENDING OPPORTUNITIES?

4 MS. CROWTHER: OBJECTION. VAGUE AS  
5 TO "THESE."

6 BY MR. RICHARDS:

7 Q. THE ONES DEALING WITH DIAMANTE DEL  
8 MAR. LIKE ALL THESE -- LIKE THIS LETTER THAT WAS  
9 GIVEN TO YOU, FOR 20 MILLION IN THREE YEARS, 8,000  
10 ACRES, ET CETERA?

11 MS. CROWTHER: TAKE A MOMENT TO

12 REVIEW THE DOCUMENT.

13 AND HE CAN ANSWER AS TO THIS  
14 SPECIFIC OPPORTUNITY, BUT I'M STILL UNCLEAR AS TO  
15 WHAT YOU MEAN BY "ALL OF THESE."

16 MR. RICHARDS: CAN WE JUST THEN  
17 LIMIT IT TO THIS SPECIFIC OPPORTUNITY?

18 MS. CROWTHER: YES.

19 MR. RICHARDS: OKAY. GREAT.

20 THE DEONENT: I DON'T KNOW. DOES  
21 IT SAY IT CAME FROM PHIL KENNER?

22 BY MR. RICHARDS:

23 Q. WELL, BEFORE THEN, THERE'S AN  
24 E-MAIL, KEN, PHIL AND DONNY. BUT WHAT I'M -- WHY  
25 DID ALL THESE LENDING OPPORTUNITIES SEEM TO FALL

0627

1 THROUGH? BECAUSE I PROBABLY COUNTED 20 THAT HAD  
2 BEEN SENT TO YOU.

3 WHAT WAS -- IT SEEMED TO ME LIKE  
4 THERE WAS ACTION TO LEND MONEY, AND THEN ON THIS  
5 EL ROSARIO, THE ONLY THING THAT YOU ENDED UP  
6 GETTING WAS A 3 MILLION DOLLAR LOAN.

7 I'M TRYING TO FIGURE OUT WHAT WAS  
8 GOING -- AT THIS TIME WE WERE STILL IN THE  
9 EUPHORIA OF NO MONEY DOWN, 120 PERCENT L.T.V.  
10 FINANCING. SO WHAT -- WHAT HAPPENED?

11 A. WE JUST WEREN'T ABLE TO DEAL WITH  
12 THE RIGHT PEOPLE. GET THE -- I MEAN, IF YOU HAVE  
13 A CHANCE -- OFF THE RECORD, YOU CAN HAVE A NICE  
14 CONVERSATION WITH PHIL ABOUT THIS.

15 BECAUSE WE WERE BOTH GOING THROUGH  
16 IT TOGETHER AT THE SAME TIME, DEALING WITH HARD  
17 MONEY LENDERS AND JUST PROBABLY DEALING WITH  
18 PEOPLE THAT -- SOME OF THE PEOPLE THAT WOULD BE  
19 VERY QUICK TO GIVE YOU A COMMITMENT, THEN ASK FOR  
20 A COMMITMENT FEE.

21 AND PHIL'S GOT A LOT OF EXPERIENCE  
22 WITH THAT, UNFORTUNATELY.

23 AND WE JUST HAD A PROBLEM GETTING  
24 TO -- GETTING THESE LOANS TO THE FINISH LINE.

25 Q. DO YOU THINK THEIR BUSINESS MODEL

0628

1 WAS TO ASK FOR THE FEE AND THEN THEY NEVER DO THE  
2 LOAN?

3 A. UNFORTUNATELY, SOME OF THEM. AS I  
4 SAID, THERE'S EXPERIENCE AT THIS TABLE WITH THAT,  
5 YES.

6 Q. NOW, ON -- SO HOW MANY -- CAN YOU  
7 ESTIMATE HOW MANY DIFFERENT -- OH, STRIKE THAT.

8 HOW DID YOU GO TO -- WHY WERE YOU  
9 GOING TO HARD MONEY LENDERS? WHY DIDN'T YOU JUST

10 GO INTO, LIKE, WELLS FARGO?

11 A. BECAUSE THERE DIDN'T SEEM TO BE AN  
12 INTEREST FROM A BANK AT THAT TIME -- FROM BANKS AT  
13 THAT TIME.

14 I BELIEVE WE DISCUSSED -- I'M NOT  
15 SURE WHICH ONES, BUT, IN GENERAL, WE -- I TALKED  
16 TO BANKS. AND IT SEEMED LIKE, TO GET IT OFF THE  
17 GROUND, IT NEEDED TO BE IN THIS MANNER.

18 Q. DID -- DID KENNER -- WAS KENNER  
19 EVER UPSET WITH YOU THAT THE 5 MILLION DOLLARS'  
20 WORTH OF LOANS FROM THE HAWAII ENTITIES DIDN'T GET  
21 REPAYED?

22 A. WHICH LOANS?

23 Q. THE MONEYS THAT WERE -- THAT YOU  
24 TESTIFIED TO YESTERDAY. I SHOWED YOU AT LEAST  
25 THERE WAS 3.8 -- 3,840,000 DOLLARS TO -- YOU HAD

0629

1 WIRE RECEIPTS FOR. I THINK THERE WAS SOME OTHER  
2 LOANS.

3 DID THAT EVER CAUSE -- WELL, DID  
4 YOU EVER WITNESS PHIL BEING CONCERNED OR WORRIED  
5 THAT THOSE -- THAT MONEY WASN'T BEING REPAYED?

6 A. IF YOU'RE TALKING ABOUT THE LAWSUIT  
7 HE FILED, THEN HE FILED A LAWSUIT IN ARIZONA.

8 Q. YEAH. BUT THAT WASN'T UNTIL LAST  
9 YEAR, I BELIEVE; RIGHT?

10 A. CORRECT.

11 Q. YOU MENTIONED BEFORE THAT --  
12 BEFORE -- THAT WAS -- WHILE YOUR RELATIONSHIP WAS  
13 STILL GOOD, DID PHIL EVER EXPRESS TO YOU THAT HE  
14 WAS CONCERNED THAT HE NEEDED THIS MONEY TO BE PAID  
15 BACK SOONER THAN LATER?

16 A. NO.

17 Q. DID -- DID PHIL EVER TELL YOU THAT  
18 HE NEEDED SOME OF IT TO BE PAID BACK?

19 A. I DON'T KNOW WHAT YOU MEAN.

20 Q. AS FAR AS SOME OF THIS MONEY THAT  
21 WAS GIVEN TO YOUR COMPANIES, DID HE EVER TELL YOU  
22 THAT IT WAS CAUSING HIM PROBLEMS NOT TO GET THE  
23 MONEY PUT BACK ON THE -- REPAYED?

24 A. WELL, HE WOULD ASK, YOU KNOW, IF  
25 THERE WAS MONEY, HE WOULD SAY AT TIMES THAT HE

0630

1 NEEDED MONEY, BUT NEVER TO REPAY. THERE WAS NEVER  
2 A LOAN AGREEMENT. THERE WAS NEVER A DOCUMENT.  
3 THERE WAS NEVER AN AGREED LOAN AMOUNT.

4 Q. I KNOW. YOU'RE VERY BIG ON  
5 AGREEMENTS WHEN THEY'RE -- YOU KNOW, WHAT I'M  
6 TRYING TO -- I'M NOT TALKING ABOUT, LIKE, AN  
7 AGREEMENT. I'M NOT TRYING TO PIN YOU DOWN OR

8 TRICK YOU.

9 I'M JUST SAYING, YOU GUYS WERE --  
10 YOU GUYS DID A LOT OF TRANSACTIONS TOGETHER; ISN'T  
11 THAT FAIR TO SAY?

12 A. YES.

13 Q. I MEAN, IT SEEMS TO ME IF YOU GUYS  
14 WERE DATING, PHIL PROBABLY SPENT MORE TIME WITH  
15 YOU THAN ANYBODY ELSE IN HIS LIFE FROM 2003 TO  
16 2006.

17 IS THAT A FAIR STATEMENT?

18 A. PROBABLY NOT, BUT THAT'S OKAY.

19 Q. YOU SPENT A LOT OF TIME TOGETHER?

20 A. PROBABLY NOT, BUT THAT'S OKAY. I  
21 MEAN, ACTUALLY, TOGETHER, PROBABLY NOT. BUT WE  
22 COMMUNICATED QUITE A BIT.

23 Q. IF YOU HAD TO TELL ME WHO YOU  
24 COMMUNICATED WITH MORE BETWEEN 2003 AND 2006 THAN  
25 PHIL KENNER, TELL ME THAT PERSON.

0631

1 A. NO. I SAID WE COMMUNICATED. IT'S  
2 DIFFERENT THAN SPENDING TIME WITH THAT PERSON.  
3 I'M NOT TRYING TO SPLIT HAIRS, BUT WE WEREN'T  
4 ALWAYS IN THE SAME ROOM. WE COMMUNICATED QUITE A  
5 BIT, YES.

6 Q. OKAY. I MEAN, BECAUSE -- WAS THERE  
7 ANY SINGLE INDIVIDUAL IN THE WORLD THAT YOU WERE  
8 DOING A GREATER AMOUNT OF TRANSACTIONS OR BUSINESS  
9 WITH THAN PHIL KENNER BETWEEN TO 2003 AND 2006?

10 A. PROBABLY NOT.

11 Q. AND DURING THAT -- DURING THAT  
12 TIME, DID YOU -- DID YOU EVER CONSIDER THAT IF HE  
13 DIDN'T GET ANY OF THIS MONEY REPAID TO SOME OF  
14 THESE HAWAIIAN ENTITIES, THAT IT WOULD -- IT COULD  
15 CAUSE HIM SOME FINANCIAL STRESS?

16 A. AS FAR AS?

17 Q. WELL, JUST THAT -- BECAUSE YOU GOT  
18 THE MONEY FROM OTHER PEOPLE AND HE COULDN'T PAY IT  
19 BACK, IT WOULD CAUSE HIM FINANCIAL STRESS.

20 MS. CROWTHER: OBJECTION. LACKS  
21 FOUNDATION.

22 THE DEPONENT: I'M NOT SURE. YOU'D  
23 HAVE TO GO THROUGH EACH TRANSACTION BECAUSE WHEN  
24 YOU SAY 5 MILLION DOLLARS, I DON'T -- I DON'T SAY  
25 THAT 5 MILLION DOLLARS IS OWED.

0632

1 SO WE'D HAVE TO GO THROUGH AND JUST  
2 SAY WHATEVER. IT COULD BE A DOLLAR, IF YOU WANT  
3 TO SAY IT THAT WAY.  
4 BY MR. RICHARDS:

5 Q. WELL, EVEN ON D.D.M.'S BOOKS,



6 THERE'S 800,000 -- OR 795 FROM LITTLE ISLE 4.  
7 WHY DON'T YOU START WITH THAT --  
8 A. RIGHT.  
9 Q. -- BECAUSE THAT'S MORE MONEY THAN  
10 ROBYN AND I HAVE IN OUR POCKET.  
11 WHAT -- WHAT -- DO YOU THINK THAT  
12 WOULD CAUSE HIM STRESS, THAT HE WOULDN'T BE ABLE  
13 TO GET THAT MONEY REPAID?  
14 A. YOU'D HAVE TO ASK HIM.  
15 Q. NO. I'M ASKING YOU.  
16 DID HE EVER TELL YOU THAT "THIS IS  
17 CAUSING ME SOME PROBLEMS"?  
18 A. DID HE EVER SAY THAT "THE MONEY I  
19 LOANED TO D.D.M. AND I HAVEN'T BEEN REPAID IS  
20 CAUSING ME PROBLEMS"?  
21 Q. DID HE?  
22 A. NO. NOT THAT I KNOW OF.  
23 Q. SO I'M ASSUMING THAT YOU WERE AWARE  
24 THAT -- OR YOU HAD PAID YOURSELF BACK BECAUSE YOU  
25 WERE -- YOU HAD FELT IT WAS LONG ENOUGH THAT THAT  
0633

1 MONEY WAS OUTSTANDING; IS THAT FAIR TO SAY?  
2 A. I'M NOT SURE WHAT THE REASONS WERE.  
3 Q. YOU DON'T KNOW WHY YOU PAID  
4 YOURSELF BACK?  
5 A. I DON'T KNOW WHAT THE REASONS WERE  
6 OR THE CIRCUMSTANCES AT THE TIME.  
7 Q. DO YOU HAVE ANY CORPORATE MINUTES  
8 AS TO WHY YOU PAID YOURSELF BACK?  
9 A. NO.  
10 Q. DO YOU HAVE ANY -- DO YOU HAVE ANY  
11 COMMUNICATION WITH PHIL, WHO'S -- IT'S FAIR TO SAY  
12 AT THE TIME YOU PAID YOURSELF BACK, YOU GUYS WERE,  
13 YOU KNOW, INVOLVED -- YOU GUYS WERE INVOLVED IN A  
14 MULTIPLICITY OF DEALS TOGETHER.  
15 AND IT WOULD BE FAIR TO SAY THAT  
16 YOU HAD -- YOU HAD A GOOD LINE OF COMMUNICATION  
17 WITH ONE ANOTHER. ISN'T THAT FAIR TO SAY?  
18 A. YES.  
19 Q. AND THEN DID YOU CONSIDER THE FACT  
20 WHEN YOU WOULD -- WHEN YOU PAID YOURSELF BACK ALL  
21 YOUR OUTSTANDING LOANS AFTER -- AFTER THAT FUNDING  
22 CAME IN FROM L.S.I., BUT PHIL DIDN'T GET ANY OF  
23 HIS LOANS PAID, THAT THAT WOULD CAUSE A PROBLEM?  
24 MS. CROWTHER: OBJECTION.  
25 MISSTATES THE EVIDENCE.

0634  
1 THE DEPONENT: I DIDN'T PAY BACK  
2 ALL MY LOANS.  
3 BY MR. RICHARDS:

4 Q. WELL, SOME OF YOUR LOANS.

5 A. AND I THINK YOU'LL SEE SOME  
6 PAYMENTS MADE TO PHIL KENNER PERSONALLY FROM THOSE  
7 PROCEEDS ALSO.

8 Q. I'M GOING TO SHOW YOU -- STRIKE  
9 THAT.

10 SO DO YOU -- DO YOU -- AS YOU'RE  
11 SITTING HERE TESTIFYING TRUTHFULLY, DO YOU BELIEVE  
12 THAT YOUR INABILITY TO REPAY ANY OF THAT MONEY  
13 THAT GENERATED FROM THE HAWAII ENTITIES IS -- IS  
14 THE CAUSE OF SOME OF THE BREAKDOWN BETWEEN YOU AND  
15 PHIL KENNER?

16 A. I DON'T KNOW.

17 Q. WELL, DO YOU THINK THAT PHIL KENNER  
18 WAS HAPPY THAT HE DIDN'T GET ANY OF THAT MONEY  
19 REPAYED?

20 MS. CROWTHER: OBJECTION. LACKS  
21 FOUNDATION. CALLS FOR SPECULATION.  
22 BY MR. RICHARDS:

23 Q. OKAY. DID YOU EVER HAVE ANY  
24 CONVERSATION WITH PHIL KENNER ABOUT WHEN THAT  
25 MONEY WAS GOING TO BE REPAYED?

0635

1 A. NO.

2 Q. SO YOU'RE TELLING ME THAT HE JUST  
3 GAVE YOU THIS MONEY AND THEN YOU NEVER DISCUSSED  
4 IT AGAIN?

5 A. YES.

6 Q. AND THEN THE FIRST TIME YOU EVER  
7 HEARD THAT PHIL WAS UPSET ABOUT IT WAS WHEN YOU  
8 RECEIVED A LAWSUIT ABOUT IT?

9 A. YES. AND THE FIRST TIME I HEARD  
10 THAT THERE WAS AN ACTUAL DOCUMENT. SO MAYBE THAT  
11 MEMORIALIZES THESE SO-CALLED LOANS.

12 Q. FORGET ABOUT THE DOCUMENT.  
13 YOU KNEW YOU RECEIVED MONEY FROM  
14 SOMEBODY AND DIDN'T GIVE ANYTHING FOR IT. IS THAT  
15 FAIR TO SAY?

16 A. WELL, THE ENTITY RECEIVED MONEY.

17 Q. THE ENTITY THAT YOU CONTROLLED.

18 A. GIVEN BY PHIL, YES.

19 Q. RIGHT. AND SO YOU'RE -- YOU  
20 WERE -- YOU WERE BORN IN '64, YOU SAID?

21 A. YES.

22 Q. OKAY. SO YOU'RE ABOUT 45 YEARS  
23 OLD?

24 (NO AUDIBLE RESPONSE BY DEPONENT.)

25 ///

0636

1 BY MR. RICHARDS:

2 Q. RIGHT. YOU KNOW THAT IF SOMEONE  
3 GIVES YOU SOMETHING THAT'S NOT YOUR, YOU KNOW,  
4 SPOUSE OR YOUR MOM, IT'S PROBABLY -- THEY EXPECT  
5 SOMETHING IN RETURN; RIGHT?

6 A. YES.

7 Q. SO WHAT DID PHIL KENNER OR THOSE  
8 ENTITIES GET IN RETURN THAT YOU'RE AWARE OF, THAT  
9 YOU CAN TESTIFY TO, FOR -- FOR THAT OVER 3.8  
10 MILLION DOLLARS THAT WAS GIVEN TO YOUR ENTITIES?  
11 IF ANYTHING, DID THEY TAKE ANYTHING IN RETURN?

12 MS. CROWTHER: OBJECTION.

13 COMPOUND.

14 THE DEPONENT: I THINK HE'S GOT  
15 39 PERCENT OF THE CABO SAN LUCAS.  
16 BY MR. RICHARDS:

17 Q. DIDN'T HE GET THAT BEFORE THE  
18 LOANS?

19 MS. CROWTHER: OBJECTION.

20 COMPOUND.

21 THE DEPONENT: NO. NO.  
22 BY MR. RICHARDS:

23 Q. NO. BUT DIDN'T -- DIDN'T KENNER  
24 PAY 2.5 MILLION FOR THE 39 PERCENT?

25 A. HE WAS SUPPOSED TO PUT UP ALL THE

0637

1 MONEY. HE WAS SUPPOSED TO SUPPLY ALL THE FUNDING  
2 FOR THE PROJECT.

3 Q. I UNDERSTAND THAT.

4 A. NO. HE DIDN'T PUT UP ANY MONEY.  
5 HE BORROWED THAT MONEY. HE DOESN'T HAVE ANY MONEY  
6 INVESTED IN IT.

7 Q. WHETHER HE BORROWED IT OR WHETHER  
8 HE STOLE IT OR WHETHER IT WAS GIFTED TO HIM, AT  
9 THE TIME OF YOUR INVESTMENT ON YOUR BOOKS AND  
10 RECORDS, IT CREDITS HIM PAYING IN YOUR CAPITAL  
11 ACCOUNT 2.5 MILLION; ISN'T THAT CORRECT?

12 A. YES.

13 Q. I MEAN, YOU DIDN'T PUT UP ANY MONEY  
14 EITHER, SO LET'S NOT GO THERE.

15 A. OKAY.

16 Q. THE -- WITH RESPECT TO -- WITH  
17 RESPECT TO THE -- THE PROCEEDS, DID YOU EVER --  
18 WERE YOU EVER CONCERNED AS THIS MONEY WAS COMING  
19 IN THAT YOU SHOULD HAVE SOME SORT OF REPAYMENT  
20 DATE?

21 MS. CROWTHER: OBJECTION. VAGUE.  
22 PROCEEDS OF WHAT?

23 MR. RICHARDS: THE PROCEEDS FROM  
24 THE HAWAII ENTITIES, ULA MAKIKA AND LITTLE ISLE 4.

25 THE DEPONENT: NO.

0638

1 BY MR. RICHARDS:

2 Q. I DON'T KNOW WHY THEY PICKED THOSE  
3 NAMES, DO YOU?

4 A. NO.

5 Q. IT DRIVES ME CRAZY. THE  
6 ARBITRATION DROVE ME CRAZY, HAVING TO KEEP  
7 REPEATING THOSE NAMES ALL THE TIME.

8 ALL RIGHT. WHY DO YOU GUYS HAVE  
9 COMPLICATED NAMES FOR ALL THESE ENTITIES?

10 A. THE MEXICAN ONES ARE A LITTLE  
11 COMPLICATED.

12 Q. YEAH. IS THERE A REASON FOR IT?

13 A. I DON'T KNOW.

14 Q. WHY CAN'T -- I MEAN, WHY CAN'T -- I  
15 MEAN TO -- ALL RIGHT.

16 NOW, LET'S TAKE A LOOK AT -- THIS  
17 IS A -- THIS IS GREG HOLST, OF 1ST SOURCE BANK,  
18 FOR --

19 DEPOSITION OFFICER: I'M SORRY,  
20 COUNSEL.

21 MR. RICHARDS: GREG HOLST,  
22 H-O-L-S-T.

23 BY MR. RICHARDS:

24 Q. 767. MR. HOLST -- THIS IS A LOAN  
25 GUY THAT FINALLY CAME THROUGH; RIGHT?

0639

1 A. FOR THE 1ST SOURCE, YES.

2 Q. RIGHT. AND WHAT WAS THE STORY WITH  
3 THIS LOAN, IF YOU KNOW?

4 A. IT WAS FOR THE FALCON AND THE  
5 METRO.

6 Q. AND WHAT -- IS THAT TO PURCHASE, OR  
7 WERE THEY ALREADY PURCHASED?

8 A. TO PURCHASE.

9 Q. AND WHO DID YOU PURCHASE THEM FROM?

10 A. I PURCHASED THE FALCON FROM  
11 JERRY CONRAD.

12 Q. WASN'T THE FALCON ALREADY OWNED,  
13 AND THIS WAS LIKE A REFI OR SOMETHING?

14 A. NO.

15 Q. SO THIS WAS TO BUY IT; RIGHT?

16 A. YES.

17 Q. AND DID -- WHY DID YOU WANT TO  
18 PURCHASE -- WHAT WAS THE POINT OF PURCHASING THESE  
19 JETS?

20 A. TO BRING PEOPLE TO THE PROPERTY.

21 Q. WHY NOT CHARTER FOR NETJET?

22 A. IF WE'RE DOING IT AT THE PACE THAT  
23 WE'RE SUPPOSED TO BE DOING IT, IT'S TOO EXPENSIVE.

24 Q. WHAT IS THE COST PER HOUR ONCE YOU  
25 PURCHASE A JET?

0640

1 A. IT COULD BE 1500 DOLLARS AN HOUR.

2 I'M GUESSING.

3 Q. AND HOW MUCH IS THE -- ISN'T THE  
4 DEBT SERVICE EXPENSIVE ON THE JET?

5 A. IT CAN BE, YES.

6 Q. DO YOU REMEMBER WHAT YOUR DEBT  
7 SERVICE WAS ON THESE JETS?

8 A. I DON'T KNOW.

9 Q. IT WASN'T 40K A MONTH?

10 A. NO.

11 Q. A LOT LESS?

12 A. I BELIEVE SO.

13 Q. I DON'T KNOW. I THINK BUYING THESE  
14 JETS IS --

15 A. IN HINDSIGHT, YOU'RE CORRECT.

16 Q. YEAH. I MEAN, I NEVER -- I LIKE  
17 CHARTERING. YOU DON'T HAVE TO MAKE PAYMENTS.

18 A. IN HINDSIGHT, YOU'RE CORRECT.

19 Q. DID YOU EVER SEEK THE OPINION OF --  
20 DID YOU EVER GET AN OPINION FROM ANYBODY AS TO  
21 WHETHER OR NOT YOU SHOULD PURCHASE JETS?

22 A. I DON'T KNOW.

23 Q. WHAT -- IF -- IF -- DO YOU KNOW WHY  
24 SERGEI GONCHAR AND PHIL KENNER GOT TO BE PERSONAL  
25 GUARANTORS ON THE -- ON THE LOANS FOR THOSE JETS?

0641

1 A. I DON'T RECALL.

2 Q. ISN'T IT TRUE THAT THEY WOULDN'T  
3 HAVE ISSUED THE LOANS FOR THE JETS IF THERE WASN'T  
4 PEOPLE WITH SUBSTANTIAL FINANCIAL CREDIT AND NET  
5 WORTH, AND THAT'S WHY THEY COULDN'T USE -- THEY  
6 NEEDED TO USE PHIL AND SERGEI?

7 A. MOST LIKELY.

8 MS. CROWTHER: OBJECTION. LACKS  
9 FOUNDATION.

10 GIVE IT A SHOT.

11 (SPEAKING SIMULTANEOUSLY.)

12 BY MR. RICHARDS:

13 Q. WHY DIDN'T YOU SIGN THE GUARANTEE?

14 A. I'M SURE I PROBABLY WOULDN'T HAVE  
15 QUALIFIED AT THAT TIME.

16 Q. DO YOU THINK YOU QUALIFY NOW?

17 A. NO IDEA.

18 Q. WHY DIDN'T YOU PROVIDE -- WHY  
19 DIDN'T YOU PROVIDE THEM YOUR FINANCIAL STATEMENT  
20 WHICH SAID YOU HAD A 51 MILLION DOLLAR NET  
21 WORTH -- OR 56 MILLION? SORRY.

22 A. BECAUSE IT WOULDN'T HAVE SHOWN THE  
23 INCOME PROBABLY NECESSARY.

24 Q. ALL RIGHT. WHOSE IDEA WAS IT TO  
25 PURCHASE THE JETS?

0642

1 MS. CROWTHER: I THINK WE DID THIS  
2 YESTERDAY. I'LL LET YOU ANSWER.

3 MR. RICHARDS: I DIDN'T ASK --  
4 (SPEAKING SIMULTANEOUSLY.)

5 MS. CROWTHER: I'M PRETTY SURE YOU  
6 DID, BUT I'LL LET HIM ANSWER AGAIN.

7 THE DEPONENT: I'M SURE IT WAS A  
8 COMBINATION OF PHIL AND MYSELF.  
9 BY MR. RICHARDS:

10 Q. ALL RIGHT. BELIEVE ME, I'M NOT  
11 GOING TO SPEND THAT MUCH TIME ON THESE JETS.

12 MS. CROWTHER: THAT STATEMENT IS  
13 ALREADY CATEGORICALLY FALSE.

14 MR. RICHARDS: I DIDN'T SPEND THAT  
15 MUCH TIME ON THE JETS.

16 MS. CROWTHER: YES, YOU DID. WE  
17 CAN DISAGREE AS TO "THAT MUCH," BUT, YES, YOU DID.

18 MR. RICHARDS: I'M KIND OF INSULTED  
19 THAT YOU'D SAY THAT. I JUST WANT TO CLARIFY.  
20 BECAUSE THERE'S SO MANY DIAMANTES, IT'S LIKE HE  
21 DID IT INTENTIONALLY TO CONFUSE EVERYBODY LATER  
22 ON. THAT'S WHY THERE'S ...

23 BY MR. RICHARDS:

24 Q. I MEAN, DOES DIAMANTE, LIKE, HAVE  
25 A -- A TRADEMARK?

0643

1 A. THE LOGO IS TRADEMARKED, YES.

2 Q. WHAT IS DIAMANTE? WHAT IS THAT?

3 A. IT JUST MEANS "DIAMOND" IN SPANISH.

4 Q. AND WHO CAME UP WITH THE NAME  
5 DIAMANTE?

6 A. I KNOW WE NAMED THE NAME DIAMOND,  
7 AND WE USED THE ENGLISH NAME WHEN WE WERE  
8 INTERESTED IN PROPERTY NEAR ENSENADA THAT WAS  
9 SHAPED LIKE A DIAMOND.

10 AND SO WHEN WE NAMED THE PROJECT --  
11 I'M NOT SURE EXACTLY WHO DID.

12 Q. ALL RIGHT. I MEAN, LOOK AT -- THIS  
13 IS -- OKAY.

14 I'M GOING TO SHOW YOU PAGE 779.  
15 OKAY. THIS IS FROM YOU TO PHIL.

16 "PHIL, I WOULD GET ON THIS  
17 A.S.A.P. AS CONTACT INFO IS AT THE  
18 BOTTOM OF THIS E-MAIL."

19 IS THIS YOU SENDING PHIL A -- LIKE

20 A REFERRAL FOR A -- MORE FUNDING FOR HAWAII?

21 A. YEAH, IT LOOKS LIKE IT.

22 Q. IT SAYS -- NOW, IT SAYS HERE YOU'RE  
23 SENDING A LETTER. I JUST WANT TO MAKE SURE I'M  
24 READING THIS CORRECT. THAT SAYS:

25 THE PERSON WHO OWNS THESE DEALS

0644

1 IS PHIL KENNER, WHO'S ALSO A PARTNER  
2 OF MINE IN MEXICO."

3 WHAT -- WHAT -- WHAT PARTNER WERE  
4 YOU REFERRING TO?

5 A. WELL, HE WAS A PARTNER IN DIAMANTE  
6 DEL MAR AT THE TIME.

7 Q. AND SO THEN PHIL KENNER HAS THAT'S  
8 ACREAGE FROM WAIKAPUNA, MOAULA AND HONU'APO.  
9 THESE DRIVES ME NUTS, THESE HAWAII NAMES.

10 W-A-I-K-A-P-U-N-A AND M-O-A-U-L-A  
11 AND H-O-N-U, APOSTROPHE.

12 BY THE WAY, IF I WANT TO HAVE ANY  
13 OF THE PLAYERS CALL YOU, WHAT IS THE BEST NUMBER  
14 FOR THEM TO CALL YOU AT?

15 A. 702-821-5495.

16 Q. AND IS THAT THE SAME NUMBER YOU'VE  
17 HAD FOR A LONG TIME?

18 (NO AUDIBLE RESPONSE BY DEPONENT.)

19 BY MR. RICHARDS:

20 Q. OKAY.

21 A. AND IF THERE'S ANY WAY I CAN  
22 CONTACT THEM, IF THAT'S OKAY, I WOULD LOVE TO HAVE  
23 THEIR CONTACT INFORMATION.

24 Q. DO YOU WANT ME TO SET UP A  
25 CONFERENCE CALL, LIKE YOU CAN CALL IN TO --

0645

1 A. I'D LIKE TO BE ABLE TO SET UP A  
2 MEETING WITH THEM, TO BE HONEST, TO MEET WITH  
3 THEM.

4 Q. AND WHAT ABOUT THE ONES THAT ARE  
5 OVERSEAS? DO THEY HAVE TO FLY HERE?

6 A. NO.

7 Q. WHAT ABOUT THE ONES THAT ARE ON THE  
8 EAST COAST?

9 A. I'M ON THE EAST COAST ENOUGH THAT I  
10 CAN -- OBVIOUSLY IT'S IMPORTANT.

11 Q. OKAY. GREAT. I'M GOING TO WORK ON  
12 THAT FOR YOU, TOO.

13 ALL RIGHT. THE -- IS BEAL BANK  
14 DEALING WITH THE HAWAII DEAL?

15 MS. CROWTHER: BATES NUMBER,  
16 PLEASE.

17 MR. RICHARDS: OH, SORRY. IT'S

18 783.

19 THE DEPONENT: I DON'T KNOW.

20 BY MR. RICHARDS:

21 Q. DO YOU KNOW WHO RON DUNKEL IS?

22 A. YES. I BELIEVE I MET HIM ONCE, AND  
23 THAT'S WHERE I SET UP THE CONTACT FOR PHIL.

24 Q. OKAY. ON BATES 787, YOU STATE  
25 THAT:

0646

1 "JERRY, THERE'S NO QUESTION ON  
2 OUR SIDE THAT THIS IS GOING TO  
3 HAPPEN. PHIL JUST NEEDS TO TALK TO  
4 GREG SO HE CAN BE CERTAIN THAT THE  
5 FINANCING IS NOT GOING TO BE A  
6 PROBLEM."

7 WHAT FINANCING IS HE REFERRING TO?

8 A. I'M ASSUMING IT'S ON THE FALCON.

9 Q. WHAT IS THE PAULARINO GATE?

10 A. YOU MAY BE BUTCHERING THE  
11 PRONUNCIATION, BUT I DON'T KNOW.

12 Q. P-A-U-L-A-R-I-N-O.

13 A. THERE'S NO E-MAIL UP HERE, SO  
14 IT'S --

15 Q. I KNOW. I DIDN'T PUT AN E-MAIL UP  
16 THERE.

17 A. I DON'T KNOW.

18 Q. IS -- THERE WAS AN E-MAIL YOU SENT  
19 ON OCTOBER 4, 2005, THAT SAID:

20 "CALL ME AT THE CABO HOUSE FOR  
21 AN UPDATE. 310-656-6537."

22 DO YOU GET L.A. NUMBERS IN CABO, OR  
23 IS THERE A CABO HOUSE IN L.A.?

24 A. IT'S A VONAGE PHONE LINE. YOU CAN  
25 HAVE A U.S. NUMBER THERE.

0647

1 Q. I SEE. AND THAT JUST RINGS TO YOUR  
2 COMPUTER OR SOMETHING?

3 A. NO. WELL, IT RINGS THROUGH THE  
4 COMPUTER INTO THE HOUSE.

5 Q. IS THAT THE SAME NUMBER?

6 A. THAT'S PHIL'S HOUSE NOW.

7 Q. DID YOU EVER PURSUE A PURCHASE OR  
8 PROPERTY AT THE PEDREGAL IN LOS CABOS?

9 A. THAT'S THE HOUSE THAT WE HAD LEASED  
10 THAT PHIL CURRENTLY OWN, I BELIEVE. IF THAT'S  
11 WHAT YOU'RE TALKING ABOUT.

12 Q. WELL, I'M SHOWING YOU -- AGAIN,  
13 THIS IS IN YOUR NAME, AND IT'S ON 799, SILVER GATE  
14 BANK, FOR 1.1 MILLION, SIX-MONTH LIBOR PLUS 450.

15 GOD, YOU GUYS GET BAD LOANS DOWN



16 THERE.

17 WHAT IS THAT -- DID YOU EVER  
18 PURCHASE THIS HOUSE?

19 A. NO.

20 Q. WHY WERE YOU TRYING TO PURCHASE IT?

21 A. I BELIEVE I WAS JUST GATHERING  
22 INFORMATION.

23 Q. OH. WAS THIS A HOUSE THAT YOU GUYS  
24 USED FOR -- TO ENTERTAIN CLIENTS AND CUSTOMERS IN?

25 A. YES.

0648

1 THAT'S IMPORTANT, ABOUT THE  
2 SIGNATURES ON THE OPERATING AGREEMENT.

3 Q. LET'S GO BACK, THEN.

4 I MADE TWO VERSIONS, ONLY ONE WITH  
5 ONE SIGNATURE LINE. AND THEN --

6 MS. CROWTHER: BATES NUMBER,  
7 PLEASE.

8 BY MR. RICHARDS:

9 Q. 808.

10 THIS IS -- WHAT -- THIS IS ON 809.

11 WHAT IS THE MANAGING MEMBER -- WHAT  
12 IS THIS -- WHAT DOES THIS MAKEUP?

13 A. DIAMANTE AIR.

14 Q. SO INITIALLY IT SHOWS, IN 1045, THE  
15 MANAGING MEMBERS ARE PHIL KENNER AND  
16 MARK THALMANN?

17 A. YES.

18 Q. AND THEN OBVIOUSLY SOMEHOW THAT  
19 CHANGED BECAUSE YOU BECAME THE MANAGER MEMBER?

20 A. A MANAGER MEMBER, YES.

21 Q. THIS E-MAIL IS PRE-INCORPORATION --  
22 THIS PEDREGAL HOUSE, WAS THIS -- DID ROGER CLEMENS  
23 STAY AT THE PEDREGAL HOUSES?

24 A. I BELIEVE HE HAS, YES.

25 Q. AND THIS -- THIS -- DO -- DO YOU

0649

1 KNOW WHO HAS THE INCORPORATION DOCUMENTS TO SEE  
2 WHO WAS ACTUALLY INCORPORATED AS THE MANAGING  
3 MEMBER?

4 A. I BELIEVE IT MAY BE IN LAS VEGAS,  
5 BUT I COULD FIND OUT.

6 Q. DOES MARK HAVE THEM?

7 A. HE SHOULD.

8 Q. AND WHAT HAPPENED WITH C.S.L.  
9 INTERNATIONAL, THE 5 MILLION DOLLAR OFFERING? DID  
10 THAT EVER GO THROUGH?

11 A. WE NEVER FINISHED IT, NO.

12 Q. WHERE DID -- WHERE ARE -- ALL THESE  
13 DOCUMENTS YOU PROVIDED WITH ALL THESE OFFERINGS,

14 WHERE DID YOU GET THEM FROM?

15 A. EVERY HANDHELD, EVER COMPUTER THAT  
16 I HAD, I BELIEVE I JUST -- WHATEVER I HAD, I JUST  
17 GAVE TO THEM AND SAID EXTRACT WHAT YOU NEED.

18 Q. YEAH. BUT YOU REALIZE THAT I CAN'T  
19 TELL IF THEY'RE IMPORTANT OR NOT BECAUSE I DON'T  
20 KNOW WHICH DEALS YOU -- YOU KNOW, THAT YOU WENT  
21 THROUGH -- WHICH ONES WENT THROUGH OR WHICH ONES  
22 DIDN'T?

23 MS. CROWTHER: OBJECTION.  
24 RELEVANCE.

25 THE DEPONENT: I'D BE HAPPY TO --

0650

1 IF THE DIRECTIVE WAS TO TAKE THE ONES I THOUGHT  
2 WERE IMPORTANT, I WOULD HAVE PROBABLY MADE IT  
3 EASIER. BUT IT WAS JUST TO SEND ALL.  
4 BY MR. RICHARDS:

5 Q. NO. I THINK SEND ALL IS BETTER.  
6 THAT'S WHY I'M JUST ASKING. I JUST WANT YOU TO  
7 KNOW WHY I DON'T HAVE ANY ABILITY TO TELL WHICH  
8 ONES WERE FUNDED AND WHICH ONES WEREN'T. I JUST  
9 WANT YOU TO KNOW.

10 NOW, THIS IS BATES 867. THERE'S A  
11 SERIES OF E-MAILS STARTING AT THE BOTTOM, WHICH  
12 SAYS THAT YOU SENT OUT -- AND YOU SAY NOT -- THIS  
13 IS FROM DONNIE RAE.

14 "NOT SURE IF HE'S IN THE PSYCHO  
15 WARD OR JAIL. ALSO WHY REMEMBER.  
16 I'LL BE ON THE PHONE WITH OUR TWO  
17 MONEY GUYS SOON."

18 AND THEN HE SAID -- YOU SAY:  
19 "THIS MAY TAKE IT ALL TO A NEW  
20 LOW. AT LEAST WE KNOW IT'S ENDING."

21 WHAT ARE WE REFERRING TO HERE?

22 A. I BELIEVE THAT'S TODD BURKHARDT.  
23 HE HAD OWED PHIL MONEY. I THINK WE TALKED A  
24 LITTLE BIT ABOUT IT YESTERDAY. HE'S VERY HARD TO  
25 PIN DOWN. ALWAYS CAME UP WITH ONE EXCUSE AFTER

0651

1 ANOTHER.

2 AND HOWEVER THIS EXCUSE WAS -- FROM  
3 PHIL'S E-MAIL, TOOK IT TO A NEW LOW. AND I  
4 CONCURRED, I GUESS.

5 Q. YOU MEAN THIS GUY'S E-MAIL? TODD'S  
6 E-MAIL?

7 A. YEAH. WELL, DON -- TODD TO DONNIE.

8 Q. WHAT IS THIS ABOUT, THOUGH? LIKE  
9 WHAT --

10 A. HE WAS -- HE HAD OWED PHIL MONEY.  
11 PHIL HAD LENT HIM MONEY. HE HAD PUT PHIL, AND

12 SUBSEQUENTLY ME, IN TOUCH WITH THIS RODNEY DALTON.  
13 AND HE MADE UP EVERY EXCUSE AND DID  
14 NOT PAY PHIL HIS MONEY BACK. SO IT WAS ALWAYS ONE  
15 THING AFTER ANOTHER.

16 I GUESS HE SAYS:  
17 "IF I HAVE GOOD BEHAVIOR OVER  
18 THE WEEKEND, THAT'S NOT GOOD."  
19 SO DONNIE SAYS HE'S NOT SURE IF  
20 HE'S IN A PSYCH WARD OR JAIL AND TOOK IT TO A NEW  
21 LOW.

22 Q. GOT YOU.  
23 THERE WAS A DOCUMENT FOR C.S.L.  
24 AIRPORT. IT WAS AN OFFERING MEMORANDUM, OFFERING  
25 ADDENDUM AND OFFERING GRAPHICS SENT TO YOU BY

0652

1 BOB GAUDET TO PHIL KENNER, YOU AND KEN.  
2 WAS THAT FOR YOU GUYS TO BUY PART  
3 OF THE AIRPORT?

4 A. WE WERE NEGOTIATING TO BUY A PIECE  
5 OF THE AIRPORT. AND THEN WE WERE ASSISTING IN  
6 PUTTING TOGETHER AN INFORMATION PACKAGE, YES.

7 Q. AND WHAT WERE YOU -- WHAT WAS YOUR  
8 ROLE IN THAT SUPPOSED TO BE?

9 A. I WAS DEALING WITH THE SELLER AT  
10 THE TIME.

11 Q. DID THEY EVER BUILD A NEW AIRPORT  
12 THERE?

13 A. THERE IS AN AIRPORT THERE, YES.

14 Q. BUT HAS THERE BEEN A NEW ONE SINCE  
15 2005?

16 A. WELL, THAT IS THE ONE WE'RE TALKING  
17 ABOUT.

18 Q. OH, THEY ACTUALLY BUILT IT?

19 A. YEAH. IT WAS BUILT AT THE TIME.

20 Q. SO WHAT WAS -- WHY DID THEY NEED  
21 ADDITIONAL MONEY, THEN?

22 A. THEY WANTED TO BUILD AN F.B.O. AND  
23 EXTEND THE RUNWAY, WHICH THEY ENDED UP DOING SOME  
24 OF THAT.

25 Q. YEAH. IT'S NOT THE BEST AIRPORT.

0653

1 A. ANOTHER ONE DOWNTOWN?

2 Q. NO. THE ONE WHERE YOU FLY INTO  
3 CABO. BEFORE THEY BUILT THE TOLL ROAD, IT WAS  
4 HORRIBLE. THEN THE TOLL ROAD IS A LITTLE FASTER.  
5 BUT --

6 A. THE OTHER ONE IS STILL -- THE ONLY  
7 PLACE TO LAND COMMERCIALLY IS SAN JOSE. IT'S THE  
8 ONLY COMMERCIAL FLIGHT.

9 Q. OH, THIS IS FOR A PRIVATE AIRPORT?

10 A. THIS IS PRIVATE. I SHOULDN'T SAY  
11 THAT. THERE'S SOME INTER -- AEROCALAFIA FLIES TO  
12 MAZATLAN AND -- FROM THERE, BUT ...

13 Q. OH, SO IF YOU GO PRIVATE, YOU GET  
14 TO GO TO THE CLOSER AIRPORT?

15 A. IT'S NOT BETTER. IT'S JUST CLOSER  
16 TO DOWNTOWN.

17 Q. RIGHT.

18 A. MOST PRIVATE PLANES STILL GO INTO  
19 SAN JOSE.

20 Q. OH, THEY DO?

21 YOU DON'T -- YOU OR YOUR ENTITIES  
22 ENDED UP NEVER PUTTING ANY MONEY IN THAT; CORRECT?

23 A. I DON'T KNOW IF THAT'S COMPLETELY  
24 TRUE, BUT --

25 Q. WELL, DO YOU GET -- DO YOU HAVE ANY  
0654

1 OWNERSHIP INTEREST IN THE AIRPORT?

2 A. NOT RIGHT NOW.

3 Q. YOU OR YOUR ENTITIES?

4 A. NO.

5 Q. DID YOU AT ONE TIME?

6 A. WE WERE NEGOTIATING TO.

7 Q. WELL, YOU SAID NOT --

8 A. IT'S STILL IN LITIGATION.

9 Q. I'M CONFUSED. YOU'RE IN LITIGATION  
10 OVER THE AIRPORT?

11 A. WITH THE AIRPORT. YES.

12 Q. WHY?

13 A. BECAUSE MONEY WAS INVESTED IN THE  
14 AIRPORT, AND WE DIDN'T GET WHAT WE WERE SUPPOSED  
15 TO GET IN RETURN.

16 Q. HOW MUCH MONEY?

17 A. I BELIEVE 1,070,000.

18 Q. AND WHO'S FILING -- WHO'S THE  
19 PLAINTIFF IN THE LAWSUIT?

20 A. I BELIEVE IT'S LOR MANAGEMENT.

21 Q. BUT ISN'T THAT THE MILLION DOLLARS  
22 THAT KENNER OR NORSTROM GAVE YOU?

23 A. I DIDN'T SAY IT SHOULDN'T BE  
24 RETURNED TO THEM WHEN IT GETS RESOLVED.

25 Q. AND WHO'S PAYING THE LEGAL FEES FOR  
0655

1 THAT?

2 A. THERE AREN'T ANY RIGHT NOW. WE DID  
3 IT -- I BELIEVE IT'S BEING HANDLED ON A  
4 CONTINGENCY.

5 Q. BY A MEXICAN ATTORNEY?

6 A. YES.

7 Q. WELL, WHAT WOULD BE THE MOTIVE FOR

8 LOR MANAGEMENT TO FILE A LAWSUIT AGAINST THE  
9 AIRPORT IF THE MONEY IS GOING TO BE RETURNED TO  
10 KENNER OR NORSTROM?

11 MS. CROWTHER: OBJECTION. CALLS  
12 FOR SPECULATION. LACKS FOUNDATION.  
13 BY MR. RICHARDS:

14 Q. WELL, I'M ASKING. WHAT WAS THE  
15 MOTIVE FOR YOU TO FILE THE LAWSUIT?

16 A. WELL, I THINK THE MOTIVE IS THAT  
17 THE MONEY IS THERE AND IT NEEDS TO BE -- EITHER  
18 THE INVESTMENT NEEDS TO GO FORWARD OR THE MONEY  
19 NEEDS TO BE PAID BACK.

20 THE INTENTION IS TO -- IS TO  
21 CONTINUE WITH THE INVESTMENT.

22 Q. YOU MEAN TO GET A PIECE OF THE  
23 AIRPORT?

24 A. YES.

25 Q. WHY DO YOU THINK THEY'RE TAKING --

0656

1 WHY DO YOU THINK THEY'RE TAKING ADVANTAGE OF YOU  
2 ON THAT MILLION DOLLAR INVESTMENT?

3 A. WHAT DO YOU MEAN?

4 Q. WHY DO YOU THINK THE AIRPORTS NOT  
5 RECOGNIZING YOUR -- YOU'RE BASICALLY SAYING THE  
6 AIRPORT TOOK YOUR MILLION --

7 A. NO. THEY RECOGNIZE THAT THE  
8 MONEY -- BECAUSE WE'RE IN A LITIGATION TO EITHER  
9 HAVE THE MONEY RETURNED OR TO CONTINUE WITH THE  
10 INVESTMENT.

11 Q. IF KENNER COULD GET THE APPROVAL OF  
12 THE OWNER TO TRANSFER THE INTEREST FROM LOR TO  
13 KENNER OR NORSTROM, WOULD YOU DO THAT?

14 A. I'D HAVE TO SEE WHAT HE'S GOING TO  
15 DO.

16 OUR INTENTION IS STILL TO CONTINUE  
17 WITH THE INVESTMENT. SO THE INTENTION WOULD BE TO  
18 BE ABLE TO PURCHASE THE AIRPORT AS DESIRED AND  
19 TO -- IF KENNER OR NORSTROM DIDN'T WANT THEIR  
20 PIECE, OR WHOEVER'S INVESTED, THEY'D WANT THEIR  
21 PIECE AT OUR PRO RATA BASIS, THEN THEY WOULD BE  
22 BOUGHT OUT.

23 Q. WELL, WHAT IS THE -- WHAT IS THE  
24 STRUCTURE -- SINCE YOU DON'T HAVE ANY OF YOUR OWN  
25 MONEY IN THE DEAL, I'M ASSUMING; CORRECT?

0657

1 A. I BELIEVE I DO. I DON'T  
2 KNOW EXACTLY HOW MUCH. I DON'T KNOW -- I DON'T  
3 KNOW WHAT THE AMOUNT IS.

4 Q. OKAY.

5 A. BUT NOT A SIGNIFICANT AMOUNT

6 COMPARED TO THOSE.

7 Q. SO THEN WHAT'S -- WHAT'S THE --  
8 WHAT'S THE -- WHAT'S -- HOW -- HOW MUCH PERCENTAGE  
9 DOES KENNER OWN IN THAT DEAL?

10 A. THERE'S NO OWNERSHIP RIGHT NOW. HE  
11 WAS GOING -- IT WAS THE SAME DEAL STRUCTURE. I  
12 WAS GOING TO DO THE DEAL. HE WAS GOING TO BRING  
13 THE MONEY. IT WAS GOING TO BE 50/50.

14 Q. I SEE.  
15 SO THAT'S WHY YOU FEEL YOU HAVE AN  
16 OBLIGATION TO TRY TO GET THE MONEY BACK BECAUSE  
17 SOMETHING WENT WRONG, AND YOU WERE RESPONSIBLE FOR  
18 THE -- PAPERING THE DEAL, BASICALLY?

19 MS. CROWTHER: ASKED AND ANSWERED.  
20 AND IT'S NOT WHAT HE SAID.  
21 BY MR. RICHARDS:

22 Q. HOW DID KENNER OR NORSTROM KNOW IF  
23 THEY WERE THE OWNERS OR THEY HAVE AN INTEREST IN  
24 THERE? WHAT -- WHAT DOCUMENTATION DID THEY GET TO  
25 SHOW THAT THEY HAVE --

0658

1 A. THEY DON'T HAVE ANY. I'VE SAID  
2 THAT.

3 Q. JUST BASICALLY JUST YOUR  
4 REPRESENTATION THAT THEY OWN HALF THE DEAL?

5 A. IF IT GOT TO COMPLETION, AND WE  
6 WERE ABLE TO COMPLETE THE DEAL, IT WAS A  
7 6.6 MILLION DOLLAR DEAL.

8 IF HE PUT ALL THE MONEY IN LIKE HE  
9 WAS -- HE WAS SUPPOSED TO, AND THE DEAL WENT  
10 ACCORDING TO PLAN, THEY WOULD HAVE -- PHIL WOULD  
11 HAVE 50 PERCENT.

12 Q. WHAT IF THE OWNER JUST RETURNS THE  
13 MILLION DOLLARS, JUST GIVES PHIL BACK HIS MONEY  
14 WITH NORSTROM, IS THAT ACCEPTABLE TO YOU?

15 A. THAT'S -- WOULD BE ACCEPTABLE.  
16 THAT'S PART OF THE LITIGATION. IF YOU WANT TO  
17 HAVE CONVERSATIONS WITH THE ATTORNEY IN -- IN --  
18 IN CABO, YOU CAN DO THAT.

19 Q. WHO'S THAT?

20 A. FERNANDO GARCIA.

21 Q. OH, YOU'RE OWN ATTORNEY IS HANDLING  
22 IT FOR YOU?

23 A. YES. AND THERE'S ANOTHER ATTORNEY  
24 ALSO.

25 Q. DID THEY EVER GET TO TRIAL IN CABO,

0659

1 DO YOU KNOW?

2 A. NOT YET, NO.

3 Q. I MEAN, IS THERE A TRIAL DATE?

4 A. NO.  
5 Q. DID THE OWNER OFFER JUST TO RETURN  
6 THE MONEY?  
7 A. NO.  
8 Q. WHAT IS THE OWNER'S POSITION?  
9 MS. CROWTHER: OKAY. COME ON.  
10 MR. RICHARDS: WELL, MY -- THIS IS  
11 A -- THERE'S A MILLION DOLLARS AT STAKE HERE.  
12 MS. CROWTHER: BUT NOT IN THIS  
13 LAWSUIT. YOU HAVEN'T SUED ABOUT THAT.  
14 MR. RICHARDS: DO YOU WANT ME TO?  
15 MS. CROWTHER: IF YOU WANT TO, THEN  
16 YOU CAN TAKE A DEPOSITION ABOUT IT. IT WILL BE A  
17 LOT SHORTER.  
18 MR. RICHARDS: ALL RIGHT. WELL,  
19 I'M JUST -- I'M JUST TRYING TO -- YOU KNOW, THERE  
20 JUST SEEMS -- THERE'S SO MANY --  
21 MS. CROWTHER: OKAY. YOUR  
22 EDITORIALIZING DOESN'T HELP ANYTHING.  
23 MR. RICHARDS: SORRY.  
24 BY MR. RICHARDS:  
25 Q. ALL RIGHT. THERE -- ON PAGE 942 --  
0660  
1 IT'S RIGHT HERE.  
2 ON PAGE 942, THERE WAS A -- THIS  
3 WAS A MEMORANDUM THAT -- THAT WAS PREPARED UP TO  
4 AUGUST 21ST, 2009.  
5 AND IT STATES OVER HERE THAT:  
6 "AS OF THE DATE OF SAID TERM  
7 SHEET, THREE PARCELS ARE HELD IN A  
8 FEE SIMPLE IN MARCH. TITLE -- OF  
9 2005. TITLE TO THESE PARCELS HAVE  
10 BEEN TRANSFERRED."  
11 IF YOU COULD READ THAT.  
12 (DOCUMENT REVIEWED BY THE DEPONENT.)  
13 BY MR. RICHARDS:  
14 Q. IS THAT ALL TRUE IN THESE  
15 PARAGRAPHS?  
16 A. I BELIEVE SO.  
17 Q. AND HOW COULD -- IS THERE -- IS  
18 THIS A TYPO? IT SAYS, "THIS INFORMATION AS OF  
19 AUGUST 21ST, 2009."  
20 BECAUSE DO YOU -- IS THIS -- IS  
21 THIS STILL -- BECAUSE IT SAYS THAT THE PROPERTY IS  
22 STILL WORTH LIKE -- SOMETHING LIKE 68 MILLION  
23 DOLLARS?  
24 A. NO. I BELIEVE THAT IF YOU OPEN  
25 THAT, AND WHATEVER THE LAST TIME THAT WAS OPENED,  
0661  
1 IT MAY AUTOMATICALLY CHANGE THE DATE.

2 Q. THAT'S WHAT I'M SAYING. SO IT'S A  
3 TYPO.

4 A. YEAH. RIGHT.

5 Q. SO IT HASN'T BEEN OPENED IN A  
6 WHILE.

7 OKAY. ON 956, IT SAYS -- HE'S  
8 ASKING:

9 "HAVE YOU HEARD ABOUT THE CASA  
10 OR THE 10? LET ME KNOW."

11 WHAT IS -- AND IT SAID:

12 "THE 10 WAS SUPPOSED TO BE FLOWN  
13 TO GARRETT AT L.A.X., AT LEAST TO DO  
14 THE CRITICAL TEST THAT WE NEED TO  
15 PASS."

16 WHAT 10?

17 A. I ASSUME THE FALCON 10.

18 Q. OH, THE FALCON 10.  
19 AND THEN WHAT WAS GARRETT SUPPOSED  
20 TO DO?

21 A. I BELIEVE THERE WAS A -- PROBABLY  
22 AN AIR FRAME TEST -- I'M GUESSING AIR FRAME TEST  
23 THAT WOULD NEED TO BE DONE TO SATISFY THE BANK.

24 Q. I SEE. OKAY. SO THAT WAS JUST  
25 STILL PART OF THE SAME REFINANCING?

0662

1 A. IT WAS THE FINANCING, YES.

2 Q. YEAH. THE FINANCING. ALL RIGHT.  
3 YOU -- YOU TESTIFIED THAT YOU DON'T  
4 HAVE A -- WHAT KIND OF AN AMEX DO YOU HAVE? IT'S  
5 NOT A BLACK CARD. WHAT IS IT?

6 A. THE DELTA SKY MILES, I BELIEVE IS  
7 THE ONE THAT YOU'RE REFERRING TO.

8 Q. ALL RIGHT. AND IT SAYS HERE ON  
9 BATES 964 -- ON BATES 964 THAT:

10 "WE MAY NEED TO USE YOUR LITTLE  
11 BLACK FRIEND FOR THIS. GRACIAS."

12 IS THAT ON A BLACK CARD?

13 A. IT'S NOT A RACIAL SLUR, NO. YEAH,  
14 IT'S PHIL'S CREDIT CARD, I'M SURE.

15 Q. DOES HE HAVE A BLACK CARD?

16 A. I THINK HE DID, YES.

17 Q. OH. ALL RIGHT.

18 AND THEN ON OCTOBER 28TH, 2005,  
19 THAT'S AT 968, YOU HAD A GOLF TOURNAMENT FOR  
20 EL ROSARIO?

21 A. YES.

22 Q. AND WHAT WAS ROBERT GAUDET DOING  
23 FOR YOUR COMPANY AT THE TIME?

24 A. HE WAS HELPING US WITH THE DUE  
25 DILIGENCE, AND WE WERE TRYING TO GET THE LEHMAN



0663

1 LOAN CLOSED.  
2 WE WERE MOVING FORWARD WITH THE  
3 FUNDING OF THE LEHMAN LOAN. HE WAS HELPING US  
4 WORK TOWARDS GETTING THAT FUNDING AND WOULD  
5 CONTINUE ON WORKING FOR DIAMANTE CABO SAN LUCAS.  
6 Q. ALL RIGHT. SO DID THAT -- DID THAT  
7 SHERIDAN -- DID THAT SHERIDAN EVER -- DID THAT  
8 SHERIDAN THING EVER GO THROUGH?  
9 A. I DON'T -- I BELIEVE SO.  
10 Q. ON 978, PHIL SENT YOU AN E-MAIL  
11 SAYING:  
12 "KJ, I HAVE 50,000 ON ITS WAY TO  
13 HUDSON BANK. PLEASE HAVE LYNN SEND  
14 IT TO AMEX AND FOLLOW UP TODAY TO  
15 MAKE SURE THE BLACK CARD IS CLEAN FOR  
16 CABO EVENTS."  
17 WHAT DOES THAT MEAN?  
18 A. I MEAN IT APPARENTLY MEANS THAT HE  
19 WANTS THE -- TO PAY DOWN HIS AMEX SO HE CAN USE IT  
20 AGAIN.  
21 Q. AND THEN IS THIS K.S.I. CAPITAL, IS  
22 THIS THE LOAN THAT I HAD ALL THE QUESTIONS ABOUT  
23 WITH RESPECT TO -- IS THIS THE ACTUAL LOAN?  
24 A. YES.  
25 CAN I SEE THE TOP OF THAT?

0664

1 Q. YEAH.  
2 A. JUST THE TOP OF THE E-MAIL. CAN  
3 YOU GO FURTHER?  
4 Q. YEAH.  
5 (DOCUMENT REVIEWED BY THE DEPONENT.)  
6 THE DEPONENT: HOLD ON.  
7 MR. RICHARDS: THAT'S 979 FOR THE  
8 RECORD.  
9 (DOCUMENT REVIEWED BY THE DEPONENT.)  
10 THE DEPONENT: OKAY.  
11 BY MR. RICHARDS:  
12 Q. IS THAT ALL RIGHT?  
13 A. UH-HUH.  
14 Q. SO THIS IS THE SAME K.S.I. THAT  
15 YOU'RE NEGOTIATING WITH NOW?  
16 A. YES.  
17 Q. ARE YOU STILL DEALING WITH  
18 DANIEL HASKEL?  
19 A. I'VE BEEN DEALING WITH  
20 HENRY HASKEL.  
21 Q. IS IT LIKE A FATHER-AND-SON DEAL?  
22 A. HE MAY BE HIS SON, I BELIEVE, YES.  
23 Q. DO ALL YOU GUYS ON THE EAST COAST

24 WORK WITH DAD?

25 A. APPARENTLY.

0665

1 Q. ALL RIGHT. OKAY. SO DID THIS LOAN  
2 EVER GET FUNDED AT THREE -- AT THESE TERMS, DO YOU  
3 KNOW?

4 A. I BELIEVE SO.

5 Q. WHO REFERRED YOU TO K.S.I. CAPITAL?

6 A. I BELIEVE KEN MICKENS.

7 Q. SO THIS IS SORT OF ACCURATE WHEN IT  
8 SAYS -- SO THE LOAN WAS FOR TWO-FIVE. THEN THERE  
9 WAS A 10 PERCENT -- 10 POINTS.

10 AND THEN BENNETT & BENNETT, WHO ARE  
11 THEY?

12 A. I BELIEVE -- I BELIEVE THAT'S KEN  
13 MICKENS'S COMPANY.

14 Q. GOT YOU.

15 SO THE LOAN -- IT'S GOVERNED  
16 PURSUANT TO NEW JERSEY LAW.

17 ARE YOU NEGOTIATING WITH THEM IN  
18 NEW JERSEY OR IN -- OR IN MEXICO?

19 A. I AM NEGOTIATING WITH THEM OVER THE  
20 PHONE.

21 Q. OKAY. OVER THE PHONE.

22 ALL RIGHT. THIS IS 993, ON  
23 HALLOWEEN.

24 YOU -- PHIL -- THIS IS -- PHIL  
25 SENDS YOU, "OLD LAUNDRY" -- "OLD DIRTY LAUNDRY,

0666

1 WHOOPS."

2 AND THEN YOU SAID:

3 "THAT IS PRETTY SAD. WE ARE  
4 STILL DEALING WITH THE SAME PROBLEMS  
5 ONE YEAR LATER. WAIT UNTIL WE ARE  
6 FLUSH WITH MONEY BEFORE YOU DECIDE TO  
7 RESEND ME THAT AGAIN. THEN MAYBE IT  
8 WILL PUT A SMILE ON YOUR FACE. NOW  
9 IT'S PRETTY DAMN DEPRESSING."

10 WHAT ARE YOU TALKING ABOUT?

11 A. I REALLY DON'T KNOW.

12 MS. CROWTHER: READ THE WHOLE  
13 E-MAIL STRING IF YOU'D LIKE.

14 MR. RICHARDS: ALL RIGHT. NO  
15 PROBLEM. THIS ONE -- SAME PAGE.

16 (DOCUMENT REVIEWED BY THE DEPONENT.)

17 THE DEPONENT: I CAN GUESS. I

18 MEAN, IT'S --

19 MS. CROWTHER: IF YOU DON'T  
20 REMEMBER OTHER THAN WHAT'S WRITTEN THERE, DON'T  
21 GUESS.

22 THE DEPONENT: IT'S NOTHING BAD. I  
23 WOULD GUESS THAT WE WOULD BE HOPING AT THAT POINT  
24 TO BE A LITTLE FURTHER ALONG.  
25 ///

0667

1 BY MR. RICHARDS:

2 Q. WHAT MOTIVATED YOU TO TRY TO  
3 DEVELOP PROPERTY IN BAJA CALIFORNIA? WHAT DREW  
4 YOUR ATTENTION TO THIS TO BEGIN WITH?

5 A. HOW I GOT TO THE PROPERTY IN THE  
6 FIRST PLACE?

7 Q. YEAH.

8 A. THE SAME -- THE SAME CAMP THAT I  
9 MENTIONED EARLIER, CAMP SUNSHINE, WAS A CAMP FOR  
10 KIDS WITH CANCER.

11 ONE OF THE CAMPERS WHO I DEVELOPED  
12 A CLOSE RELATIONSHIP, HE BECAME LIKE MY LITTLE  
13 BROTHER.

14 YEARS LATER, AFTER HE BECAME AN  
15 ADULT, HE TOLD ME THAT HIS AUNT AND UNCLE HAD  
16 BUILT A HOUSE ON THIS PROPERTY IN EL ROSARIO, AND  
17 HE FELT THAT THEY THOUGHT THAT MARRIOTT HOTELS WAS  
18 GOING TO BE PURCHASING AROUND IT. AND HE THOUGHT  
19 THAT I MIGHT WANT TO GO TAKE A LOOK.

20 AND THAT WAS IN 1998.

21 Q. AND DO YOU FEEL THAT -- THAT THEY  
22 TOOK ADVANTAGE OF YOU AT ALL?

23 A. NO.

24 Q. SO IN HINDSIGHT, YOU WOULD HAVE  
25 STILL BOUGHT THIS PROPERTY?

0668

1 A. I WOULD HAVE DONE THE THINGS --  
2 SOME THINGS DIFFERENTLY. I THINK WE CAN ALL SAY  
3 THAT IN HINDSIGHT. BUT I --

4 Q. WHAT WOULD YOU HAVE DONE  
5 DIFFERENTLY?

6 A. I DON'T KNOW. I WOULD HAVE  
7 OBVIOUSLY TRIED TO DO THINGS A LITTLE DIFFERENTLY.

8 Q. DID YOUR EVER DO A DEAL WITH  
9 MT. ZION COMMERCIAL SERVICES?

10 A. NO.

11 Q. WAS THERE A LAWSUIT AS A RESULT OF  
12 MT. ZION COMMERCIAL SERVICES?

13 A. PHIL HAD A LAWSUIT WITH THEM, YES.

14 Q. AND WHAT WAS HE TRYING TO RECOVER?

15 MS. CROWTHER: OBJECTION. LACKS  
16 FOUNDATION?

17 BY MR. RICHARDS:

18 Q. DO YOU KNOW WHAT THE ISSUES WERE?

19 A. I BELIEVE COMMITMENT FEES.

20 Q. ALL RIGHT. WHO -- DO YOU KNOW WHO  
21 THE METROLINER AIRPLANE WAS EVER -- WHO IT WAS  
22 EVER ENTITLED TO?

23 A. I'M NOT SURE OF THE QUESTION.  
24 THE -- THE --

25 Q. THE PLANE. THE METROLINER

0669

1 AIRPLANE, WHO'S NAME IT WAS TITLED TO?

2 A. WHEN WE BOUGHT IT?

3 Q. YEAH.

4 A. BEFORE DIAMANTE AIR?

5 Q. YEAH.

6 A. I BELIEVE IT WAS METRO JET, BUT I'M  
7 NOT SURE.

8 Q. OKAY. NOW, TAFFY JOWDY JR., WHO'S  
9 THAT?

10 A. MY BROTHER.

11 Q. OKAY. I'M SHOWING YOU 1070. IT  
12 SAYS -- THIS IS AN E-MAIL DATED OCTOBER 7, 2003.

13 WHAT -- DID HE -- WHAT'S THIS  
14 E-MAIL REGARDING? IS THIS JUST PRINTED -- I'M  
15 CONFUSED.

16 A. YES. AGAIN, HE WAS JUST COMPILING  
17 THE E-MAIL. SO HE -- IT HAS NOTHING TO DO WITH  
18 HIM.

19 Q. SO THESE E-MAILS THAT WERE  
20 PROVIDED, WERE THEY STORED ON -- WHERE WERE  
21 THEY -- WHERE WAS, LIKE, THIS E-MAIL STORED?  
22 BECAUSE OBVIOUSLY YOU PRINTED THIS OUT ON A PIECE  
23 OF PAPER.

24 A. RIGHT. I DON'T KNOW WHERE THESE  
25 INDIVIDUAL E-MAILS WERE STORED.

0670

1 AGAIN, I GAVE WHATEVER COMPUTERS  
2 I'VE HAD, AND I'VE HAD TO GO THROUGH E-MAILS, YOU  
3 KNOW, QUITE A BIT OVER THE LAST SEVERAL MONTHS,  
4 SO ...

5 Q. I SEE. SO YOU BASICALLY HAD  
6 EVERYBODY YOU KNOW -- ARE YOU COMPUTER LITERATE?

7 A. NO. I MEAN, I USE THE COMPUTER ALL  
8 THE TIME, BUT I WOULDN'T CALL MYSELF VERY COMPUTER  
9 LITERATE.

10 SO I HAD FORWARDED A BUNCH OF  
11 E-MAILS TO HAVE PRINTED OUT. AND WHOEVER ELSE HAD  
12 E-MAILS STORED, JUST SAID, "JUST FORWARD THEM  
13 TO" -- YOU KNOW. SO SOME, I GUESS, WENT TO TAFFY  
14 TO PRINT.

15 Q. I SEE. SO YOU BASICALLY -- WHEN  
16 YOU GOT THE CALL FROM CALDWELL LESLIE SAYING, "WE  
17 NEED THESE E-MAILS NOW, TIME IS UP," YOU JUST

18 STARTED CALLING PEOPLE AND SAYING, "WE NEED TO GET  
19 ALL THESE E-MAILS"?

20 MS. CROWTHER: OBJECTION.

21 BY MR. RICHARDS:

22 Q. WHEN DID YOU START COLLECTING THESE  
23 E-MAILS?

24 A. I'VE BEEN DOING IT FOR A WHILE.

25 Q. WHEN IS -- HAS TAFFY JOWDY EVER

0671

1 BEEN PAID BY YOU OR ANY OF YOUR ENTITIES FOR  
2 ANYTHING?

3 A. YES.

4 Q. FOR WHAT?

5 A. HELPING WITH THIS PROCESS HERE.

6 Q. THIS PARTICULAR PROCESS?

7 A. THIS WHOLE PROCESS.

8 Q. HOW MUCH IS HE BEING PAID?

9 A. I DON'T KNOW EXACTLY. I THINK

10 5,000 DOLLARS A MONTH.

11 Q. FOR -- FOR LITIGATION SUPPORT?

12 A. BASICALLY.

13 Q. DOES HE HAVE ANY BACK -- LEGAL

14 TRAINING BACKGROUND?

15 A. HE'S A LAWYER.

16 Q. OH, HE'S --

17 A. HE NEVER PRACTICED. HE PASSED THE  
18 BAR IN CONNECTICUT AND NEVER PRACTICED.

19 Q. YOU DO KNOW MORE LAWYERS THAN ANY  
20 GUY I'VE EVER MET AS FAR AS DIFFERENT STATES.  
21 IT'S INCREDIBLE. BILL'S A -- HE'S A MASSACHUSETTS  
22 LAWYER.

23 DO YOU LIKE CALIFORNIA LAWYERS THE  
24 BEST SO FAR?

25 A. SO FAR, YES.

0672

1 Q. THAT'S WHAT I THOUGHT.

2 A. OBVIOUSLY.

3 Q. ALL RIGHT. SO -- BECAUSE THESE  
4 E-MAILS, THE WAY YOU HAVE THEM ON THE -- THE WAY  
5 YOU HAVE THEM ON THE -- THE WAY YOU HAVE THESE  
6 E-MAILS ON THE ROSTER HERE, THERE'S NO -- WHAT  
7 HAPPENS IS BECAUSE THEY'RE PRINTED OUT FROM  
8 DIFFERENT COMPUTERS, THEY'RE NOT IN CHRONOLOGICAL  
9 ORDER.

10 SO -- SO WHAT I'M TRYING TO DO IS  
11 IF I CAN'T DEMISE WHAT -- WHAT THE E-MAIL'S  
12 REFERRING TO OR IF IT'S CUMULATIVE, I'M NOT ASKING  
13 YOU ABOUT IT.

14 BUT I CAN'T TELL BECAUSE THEY  
15 ALWAYS GO BACK TO THAT '03, THEN THEY GO TO THE

16 PRESENT. SO THAT'S WHY THERE'S A LITTLE  
17 CONFUSION. I JUST WANT -- JUST SO YOU UNDERSTAND,  
18 THEY'RE -- I WAS GIVEN THIS INDEX?

19 A. OKAY.

20 Q. AND SO IT'S CONFUSING TO -- I HAVE  
21 TO READ THE SAME PERIOD OF YOUR LIFE FIVE  
22 DIFFERENT TIMES BECAUSE THEY'RE FROM FIVE  
23 DIFFERENT COMPUTERS.

24 SO I'M EXPLAINING WHY IT'S  
25 COMPLICATED BECAUSE I'M TRYING TO MENTALLY AVOID

0673

1 HAVING TO REPEAT THE SAME SUBJECT MATTER, BUT  
2 SOME -- NOT ALL OF IT I CAN FIGURE OUT. SO THAT'S  
3 JUST WHAT I'M -- WHAT I'M DOING.

4 I STAYED UP VERY LATE LAST NIGHT  
5 TRYING TO SIPHON OFF SOME OF THESE THINGS, BUT  
6 IT'S JUST TOO MANY PAGES TO PULL OUT OF -- LIKE I  
7 GOT A GROUP OF, LIKE, 300 P.D.F.S, AND IT'S TOO  
8 MANY PAGES TO KEEP PULLING OUT JUST THE PAGE I  
9 THINK MAY BE RELEVANT. I'D HAVE, LIKE 2900  
10 SUBDIRECTORIES.

11 SO THAT'S WHY I'M -- IT'S JUST  
12 EASIER TO QUICKLY SCAN THROUGH THEM, AND THEN WHEN  
13 I GET TO AN AREA THAT I -- NOW, THIS RAISES  
14 ANOTHER QUESTION HERE.

15 LET ME -- I'M GOING TO SHOW YOU  
16 BATES 1108. AND I'LL PUT THAT BACK ON THE BIG  
17 SCREEN.

18 AND THAT IS -- THERE'S AN E-MAIL  
19 FROM TORONTO, BRIAN MCBRIDE HAS BEEN DECERTIFIED  
20 AS A PLAYER.

21 AND THEN THERE'S AN E-MAIL WITH  
22 PHIL KENNER TO YOU.

23 DO YOU KNOW WHAT THIS HAD TO DO  
24 WITH YOUR BUSINESS AT ALL?

25 A. HE WAS SOMEBODY THAT PHIL KNEW AND

0674

1 I KNEW. AND PHIL DIDN'T HAVE A VERY GOOD  
2 RELATIONSHIP WITH HIM.

3 AND WHEN THAT CAME OUT, PHIL  
4 OBVIOUSLY FORWARDED THAT TO ME.

5 Q. I SEE. SO WHEN HE SAYS, "WHAT A  
6 SHAME, I KNOW IT COULD HAVE NOT BEEN HIS FAULT,"  
7 HE WAS BEING SARCASTIC?

8 A. I BELIEVE SO.

9 Q. OKAY. AND WHEN -- GOING BACK TO  
10 YOUR TESTIMONY EARLIER, WHEN YOU WERE TALKING  
11 ABOUT THE NEWSPAPERS, THERE WAS THE CONTENTION  
12 THAT -- THAT YOU HAD -- THAT THIS NEWSPAPER --  
13 THAT THIS LAWSUIT SOMEHOW GOT PICKED UP BY THE

14 NEW YORK POST.

15 DO YOU REMEMBER THAT TESTIMONY?

16 A. IT WAS PICKED UP BY A LOT OF  
17 THINGS, YES.

18 Q. OKAY. ARE YOU -- ARE YOU AWARE  
19 THAT IT WAS THE STORY OF TOMMY CONSTANTINE AND THE  
20 LAWSUIT AGAINST PHIL KENNER BY OWEN NOLAN THAT  
21 BROUGHT THIS ENTIRE DIAMANTE INVESTMENT TO SOME  
22 SORT OF FOCUS BY THE MEDIA? ARE YOU AWARE OF  
23 THAT?

24 MS. CROWTHER: OBJECTION. LACKS  
25 FOUNDATION. CALLS FOR SPECULATION.

0675

1 THE DEPONENT: I DON'T KNOW.

2 BY MR. RICHARDS:

3 Q. OKAY. DO YOU REMEMBER THE STORY  
4 COMING OUT BY THE DAILY NEWS, LONG BEFORE YOU WERE  
5 INVOLVED IN THIS, THAT THERE WAS A STORY THAT CAME  
6 OUT ON THIS INVESTMENT IN CABO SAN LUCAS THAT WAS  
7 RECOMMENDED BY PHIL KENNER TO OWEN NOLAN,  
8 JOE JUNEAU -- AND JOE JUNEAU.

9 DO YOU -- DO YOU REMEMBER THAT  
10 STORY?

11 A. I DON'T REMEMBER IT PERTAINING TO  
12 DIAMANTE CABO SAN LUCAS.

13 Q. YOU DON'T?

14 A. IF YOU SAY IT WAS MENTIONED IN  
15 THERE. I READ AN ARTICLE IN THE DAILY NEWS.

16 Q. YEAH. DO YOU REMEMBER -- DO YOU  
17 REMEMBER -- BECAUSE -- I JUST WANTED TO CLEAR THIS  
18 UP WITH YOU.

19 YOU -- YOU WERE UNDER THE BELIEF  
20 THAT -- THAT -- THAT THESE PLAYERS PUBLISHED THIS  
21 STORY IN THE NEW YORK DAILY NEWS BECAUSE -- THE  
22 CONTENT WAS INTERESTING, AND I WAS TRYING TO LET  
23 YOU KNOW THAT THE CONTENT BECAME INTERESTING  
24 BECAUSE OWEN NOLAN SUED PHIL KENNER AND JOE JUNEAU  
25 SUED PHIL KENNER IN FEDERAL COURT AND THEN SUED

0676

1 TOMMY CONSTANTINE IN FEDERAL COURT.

2 AND THEN THE DAILY NEWS DID A STORY  
3 ON THESE INVESTMENTS THAT THESE PLAYERS MADE  
4 RELATED TO CABO SAN LUCAS.

5 I JUST -- THAT'S WHAT BROUGHT SORT  
6 OF THE SPOTLIGHT ON IT. AND I WAS CONCERNED --  
7 AND I, YOU KNOW, HAD SOME TIME TO REFLECT AT THE  
8 BREAK, BECAUSE I WAS WONDERING, YEAH, WHY DID THIS  
9 STORY GET ANY COVERAGE?

10 AND THEN I REALIZED IT'S BECAUSE  
11 YOU DON'T -- YOU WEREN'T -- MAYBE YOU WEREN'T

12 PUTTING TWO AND TWO TOGETHER. BUT I JUST -- I  
13 JUST WANT TO --

14 A. I CAN DISAGREE; CORRECT?

15 Q. YEAH, YOU CAN DISAGREE.

16 A. I WOULD DISAGREE IN THAT IF THIS  
17 COMPLAINT THAT YOU HAVE NOW, WHICH IS STILL, I  
18 WOULD SAY, 90 PERCENT FALSE -- AND WE CAN CONTINUE  
19 TO GO THROUGH IT IF YOU'D LIKE -- IF THIS IS WHAT  
20 YOU FILED AGAINST ME THE FIRST TIME, IT WOULDN'T  
21 HAVE GOTTEN -- IT WOULDN'T HAVE PUT ME IN THE  
22 POSITION THAT IT PUT ME.

23 NO ONE -- NO ONE WAS INTERESTED IN  
24 A LAND DEAL IN -- IN THIS THE WAY THEY WERE  
25 INTERESTED IN WHAT YOU MENTIONED IN THE FIRST

0677

1 COMPLAINT.

2 SO I -- YOU KNOW, I DON'T THINK WE  
3 NEED TO GO THROUGH IT. I THINK THAT THERE'S --  
4 AGAIN, WHERE WE'RE AT. BUT I THINK THAT THE FACT  
5 THAT YOU PUT ALL OF THOSE ALLEGATIONS IN THERE PUT  
6 US IN A POSITION THAT WE'RE IN.

7 Q. ALL RIGHT. WELL, YESTERDAY WE  
8 WERE -- WE WERE -- WE WENT ALL THE WAY TO -- WE  
9 WENT ALL THE WAY TO THE FIRST -- THE FIRST CAUSE  
10 OF ACTION --

11 MS. CROWTHER: IF YOU'RE GOING TO  
12 CHANGE GEARS, CAN WE TAKE A RESTROOM BREAK,  
13 PLEASE?

14 MR. RICHARDS: YEAH, WE CAN.

15 THE VIDEOGRAPHER: WE'LL GO OFF THE  
16 VIDEOTAPE RECORD AT THE TIME OF 5:16 P.M.

17 (WHEREUPON, A RECESS WAS HELD  
18 FROM 5:16 P.M. TO 5:33 P.M.)

19 THE VIDEOGRAPHER: WE'RE BACK ON  
20 THE VIDEOTAPE RECORD, BEGINNING TAPE NUMBER 4 IN  
21 VOLUME NUMBER 2 AT 5:33 P.M.

22 BY MR. RICHARDS:

23 Q. OKAY. I'M GOING TO SHOW YOU JOWDY  
24 1200. THIS IS AN E-MAIL FROM PHIL TO YOU STATING:  
25 "I SPOKE WITH HER YESTERDAY, AND

0678

1 SHE SAID SHE WOULD HAVE COME IF SHE  
2 HAD LONGER ADVANCED NOTICE. SHE  
3 WANTS ROGER TO CALL WITH HIS NEW 713  
4 NUMBER FOR HER. BY THE WAY SHE  
5 SOUNDED REALLY HOT."

6 THAT'S WHAT YOU CALL A GOTCHA.

7 A. YEAH. I DON'T KNOW.

8 Q. ROGER DID HAVE A 713 NUMBER; RIGHT?

9 A. ROGER?



10 Q. CLEMENS.  
11 A. HE DOES HAVE A 713 NUMBER.  
12 Q. OKAY. SO WAS THIS LIKE A GIRL THAT  
13 WAS GOING TO VISIT HIM?  
14 A. I HAVE NO IDEA.  
15 Q. BY THE WAY, DID ADRIENNE MOORE  
16 (PHONETICALLY) STAY AT THE HOUSE EVER?  
17 A. WHICH HOUSE?  
18 Q. WHAT'S IT CALLED?  
19 A. PEDREGAL?  
20 Q. YEAH.  
21 A. YES.  
22 Q. OKAY. ALL RIGHT.  
23 SO WAS -- WOULD -- WHY WOULD  
24 PHIL -- DO YOU KNOW -- DO YOU REMEMBER THAT E-MAIL  
25 WITH PHIL OR NO?

0679

1 A. NO.  
2 Q. IS THIS -- LIKE YOU GUYS WOULD SEND  
3 E-MAILS LIKE THAT SOMETIMES?  
4 A. WE COMMUNICATED A LOT.  
5 Q. PHIL SENT YOU AN E-MAIL ON  
6 JANUARY 31ST, 2005, SAYING:  
7 "I'M WEARING THE WHITE SHIRT  
8 TONIGHT."  
9 WHAT'S THAT?  
10 A. I HAVE NO IDEA.  
11 Q. YOU GUYS HAD TOO MUCH FUN DOWN  
12 THERE.  
13 THEN THERE WAS AN E-MAIL HE SENT  
14 YOU THAT SAID, "ROCKS DOC."  
15 DO YOU KNOW WHAT THAT'S ABOUT?  
16 A. NO.  
17 Q. OKAY. JUST SO TOMMY CONSTANTINE  
18 DOESN'T FEEL WE LEFT HIM OUT OF THIS DEPO, THERE'S  
19 A KENNER -- I MEAN AT JOWDY 1207:  
20 "I NEED THE CABO HOUSE FOR TOMMY  
21 AND A FEW RACECAR DRIVERS."  
22 WHAT HOUSE IS HE REFERRING TO?  
23 A. I ASSUME THE HOUSE IN PEDREGAL.  
24 Q. ALL RIGHT. AND THEN HE ASKS YOU IN  
25 AN E-MAIL:

0680

1 "ARE YOU ON THE SHUTTLE TO OCENA  
2 CLUB?"  
3 O-C-E-N-A.  
4 A. I HAVE NO IDEA.  
5 Q. IS THAT -- IS THAT OCEANA CLUB?  
6 A. IT'S NOT UP HERE, SO I DON'T  
7 (INDICATING) --

8 Q. NO. I KNOW. I'LL SHOW YOU THE  
9 SPELLING.

10 THAT'S 1208.

11 A. I DON'T KNOW.

12 Q. IT'S PROBABLY OCEAN CLUB.  
13 DID YOU GO TO OCEAN CLUB IN

14 PHOENIX?

15 A. I DON'T KNOW.

16 Q. BECAUSE TOMMY CONSTANTINE EATS  
17 THERE EVERY NIGHT, SO I WAS WONDERING.

18 A. I DON'T KNOW.

19 Q. OKAY. WHEN PHIL SENT YOU, ON 1210,  
20 BATES 1210, IT SAYS:

21 "THE 20K HAS LEFT THE BUILDING."

22 WHAT'S HE REFERRING TO?

23 A. I ASSUME HE SENT 20,000 DOLLARS  
24 SOMEWHERE.

25 Q. WHAT'S THE COZUMEL DOCS?

0681

1 A. I BELIEVE HE HAD A FRIEND WHO HAD  
2 SOMETHING GOING ON IN COZUMEL.

3 Q. IS CASA DE CABO STILL THE SAME  
4 HOUSE?

5 MS. CROWTHER: CAN YOU PLEASE REFER  
6 TO BATES NUMBERS WHEN YOU'RE ASKING HIM ABOUT AN  
7 E-MAIL?

8 MR. RICHARDS: 1222.

9 THE DEPONENT: CASA -- WELL IT'S  
10 CASA DE CAZA, BUT CASA DE CABO, I WOULD ASSUME, IS  
11 STILL THE SAME PEDREGAL HOUSE.  
12 BY MR. RICHARDS:

13 Q. WHAT PAPERWORK WAS FERNANDO -- IT'S  
14 1227 -- TRYING TO PREPARE FOR YOU? YOU DON'T  
15 KNOW?

16 A. IT LOOKS LIKE THAT SAME PROJECT  
17 THAT PHIL IS LOOKING AT IN COZUMEL. HE MAY HAVE  
18 WANTED FERNANDO TO -- TO LOOK AT THE PAPERWORK  
19 APPARENTLY.

20 Q. DID YOU EVER -- THIS IS JUST A  
21 "YES" OR "NO" QUESTION.

22 HAVE YOU EVER HAD LOUIS FREEH  
23 INTERACT WITH DANSKE BANK?

24 MS. CROWTHER: OBJECTION.

25 MR. RICHARDS: JUST "YES" OR "NO."

0682

1 MS. CROWTHER: NO. YOU'RE ASKING  
2 HIM SUBSTANTIVELY IF HE DIRECTED AN ATTORNEY TO DO  
3 SOMETHING. YOU DON'T GET TO ASK THAT.

4 MR. RICHARDS: OF COURSE YOU DO.

5 MS. CROWTHER: I'LL INSTRUCT HIM

6 NOT TO ANSWER.

7 BY MR. RICHARDS:

8 Q. WELL, HAS LOUIS FREEH EVER  
9 REPRESENTED YOU WITH DANSKE BANK?

10 A. I DON'T BELIEVE SO.

11 Q. DO YOU KNOW WHY THERE'S ALL THESE,  
12 LIKE, ONE-LINE E-MAILS? IS THIS ON LIKE AN  
13 INSTANT MESSAGE OR SOMETHING?

14 A. I WOULD ASSUME IT'S ON A -- ONE OF  
15 THOSE OLDER -- I MEAN I FORGET WHAT THE DATE IS.  
16 IT WAS A TWO-WAY PAGER THING.

17 Q. LIKE A NEXTEL?

18 A. NO. I DON'T KNOW WHAT YOU CALL IT.  
19 IT WAS ONE OF THOSE THINGS THAT  
20 LOOKED LIKE A PAGER. IT HAD A -- THE PRECURSOR TO  
21 THE BLACKBERRY, I BELIEVE.

22 Q. ALL RIGHT. WHAT'S  
23 EXCLUSIVERESORTS.COM?

24 MS. CROWTHER: BATES NUMBER,  
25 PLEASE.

0683

1 MR. RICHARDS: 1257.

2 THE DEPONENT: THEY ARE A VACATION  
3 CLUB.

4 BY MR. RICHARDS:

5 Q. ON BATES 1260, YOU STATED:  
6 "I WILL PUT THE SCREWS TO TOAD  
7 (PHONETICALLY). NO MERMAIDS UNTIL WE  
8 GET THE MONEY. GRACIAS, AMIGO."  
9 WHAT DOES THAT MEAN?

10 MS. CROWTHER: OBJECTION. ASKED  
11 AND ANSWERED. WE LOOKED AT THIS YESTERDAY.

12 MR. RICHARDS: THIS SAME E-MAIL?

13 MS. CROWTHER: YEP.

14 MR. RICHARDS: WELL, I'M LETTING  
15 YOU KNOW HE'S PRODUCED IT TWICE, THEN.

16 MS. CROWTHER: THAT'S BECAUSE THERE  
17 ARE TWO DIFFERENT VERSIONS, AND WE PRODUCED ALL OF  
18 OUR DOCUMENTS.

19 MR. RICHARDS: WHY IS THERE TWO  
20 DIFFERENT VERSIONS, IF YOU KNOW?

21 MS. CROWTHER: BECAUSE THERE'S A  
22 SENT AND THERE'S A RECEIVED.

23 MR. RICHARDS: OH, OKAY.

24 MS. CROWTHER: YOU ASKED FOR ALL  
25 E-MAILS BETWEEN KEN AND PHIL.

0684

1 MR. RICHARDS: SO I GUESS YOU THINK  
2 THAT HE'S USING LIKE -- HE'S JUST PRINTING OUT THE  
3 SENT FOLDER OF HIS OUTLOOK? BECAUSE I CAN'T TELL

4 THIS IS TAFFY JOWDY. THE OTHER ONE WAS SOME GUY  
5 NAMED BEN.

6 MS. CROWTHER: I DON'T KNOW EXACTLY  
7 HOW THAT HAPPENED BECAUSE I DON'T KNOW WHAT THEY  
8 DID TO COLLECT DOCUMENTS.

9 BUT WHAT I CAN TELL YOU IS THAT  
10 I'VE SEEN SEVERAL TIMES THAT WE HAVE ONE -- THAT  
11 IT APPEARS TO BE A COLLECTION OF THE KEN JOWDY  
12 E-MAILS WITH PHIL KENNER, AND THEY DON'T HAVE  
13 PHIL'S RESPONSES.

14 AND THEN WE HAVE THE OTHER SIDE,  
15 WHERE IT'S PHIL'S COMMUNICATIONS. AND SOMETIMES  
16 WE HAVE KEN'S RESPONSES. SOMETIMES WE DON'T.

17 MR. RICHARDS: I SEE. OKAY.

18 MS. CROWTHER: AND SOME OF IT MAY  
19 RELATE TO THE SYSTEM PAGER, WHERE YOU SAY SOME OF  
20 THEM IS PHIL'S AND SOME OF THEM IS KEN'S.

21 BY MR. RICHARDS:

22 Q. ON BATES 1308, IT SAID THAT:  
23 "HE SAID 2 MILLION WILL GET TO  
24 DIAMANTE DEL MAR ACCOUNT TOMORROW  
25 REGARDING TODD."

0685

1 WHAT WAS THAT ABOUT?

2 A. I -- I'M GUESSING, BUT IT MAY HAVE  
3 HAD SOMETHING TO DO WITH RODNEY AND -- AND HIS  
4 SUPPOSED DELIVERY OF FUNDS, WHICH NEVER HAPPENED.

5 Q. WHEN WAS THE LAST TIME YOU HAD ANY  
6 DIRECT COMMUNICATION WITH PHIL KENNER?

7 A. WE'VE ACTUALLY -- WE'VE BEEN IN THE  
8 SAME ROOM. WE HAVEN'T SAID A WHOLE LOT OF WORDS  
9 TO EACH OTHER. I'M TRYING TO THINK OF THE LAST  
10 TIME WE ACTUALLY HAD A DISCUSSION.

11 Q. DID -- OKAY. GO AHEAD.

12 A. I DON'T REMEMBER.

13 Q. DID YOU MEET HIM IN LAS VEGAS?

14 A. YES.

15 Q. DID YOU WEAR A WIRE?

16 A. NO.

17 Q. DID -- DID -- DID YOU EVER TELL --  
18 HAVE YOU EVER TOLD ANYBODY THAT YOU THOUGHT THAT  
19 PHIL KENNER WAS GOING TO END UP IN JAIL IN 2010?

20 A. I DON'T BELIEVE SO. I DON'T KNOW.

21 Q. DO YOU HAVE ANY REASON TO -- DO YOU  
22 HAVE ANY FACTS THAT WOULD -- THAT YOU'RE AWARE OF  
23 THAT WOULD -- AS TO -- AS TO WHY PHIL KENNER WOULD  
24 WANT TO RUIN THE DIAMANTE PROJECT?

25 A. I DON'T KNOW.

0686

1 Q. DO YOU KNOW -- DO YOU HAVE ANY

2 FACTS AS TO WHY -- AS TO WHY PHIL KENNER FILED A  
3 LAWSUIT AGAINST YOU IN ARIZONA AS FAR AS WHAT HIS  
4 MOTIVATIONS WERE?

5 MS. CROWTHER: OBJECTION. LACKS  
6 FOUNDATION.

7 MR. RICHARDS: I'M ASKING IF HE  
8 KNOWS.

9 THE DEPONENT: I DON'T KNOW.

10 MS. CROWTHER: HE COULDN'T KNOW.

11 MR. RICHARDS: WHY? PHIL COULD  
12 HAVE TOLD HIM OR SOMEBODY ELSE COULD HAVE TOLD  
13 HIM. I'M GOING TO FOLLOW-UP ON THAT.  
14 BY MR. RICHARDS:

15 Q. ISN'T IT TRUE THAT IN THE 18 MONTHS  
16 YOU WERE DEALING WITH TOMMY CONSTANTINE, THAT HE  
17 TOLD YOU REPEATEDLY THAT PHIL KENNER WAS VERY  
18 UPSET THAT HE WASN'T GETTING ANY OF THE HAWAII  
19 MONEY BACK?

20 A. NO.

21 Q. DID TOMMY CONSTANTINE -- DID YOU  
22 EVER HAVE A DISCUSSION WITH --

23 MR. RICHARDS: OH, JUST -- YOU  
24 DON'T HAVE TO TYPE THIS.

25 ///

0687

1 (WHEREUPON, A DISCUSSION WAS HELD  
2 OFF THE RECORD.)

3 BY MR. RICHARDS:

4 Q. DID YOU EVER HAVE ANY DISCUSSION  
5 WITH TOMMY CONSTANTINE AS TO WHY PHIL KENNER WAS  
6 UPSET?

7 A. I HAD A LOT OF DISCUSSIONS WITH  
8 TOMMY CONSTANTINE.

9 Q. WELL, DO YOU REMEMBER ANYTHING  
10 ABOUT -- WITH TOMMY CONSTANTINE ABOUT WHY  
11 PHIL KENNER WAS UPSET?

12 A. HE -- HE WOULD SAY HE FELT THE  
13 PROJECT WAS BEING MISMANAGED. I'M SURE HE WAS --  
14 I DON'T KNOW. I DON'T KNOW WHAT WAS IN PHIL'S  
15 HEAD.

16 I KNOW THAT TOMMY CONSTANTINE WOULD  
17 REPEATEDLY SAY THAT HE THOUGHT PHIL WAS BEING  
18 UNREASONABLE, TO ME.

19 AND, AGAIN, I WAS NAIVE. I DON'T  
20 KNOW IF TOMMY CONSTANTINE ACTUALLY BELIEVED THAT,  
21 OTHER THAN WHAT HE WAS SAYING TO ME.

22 Q. DO YOU HAVE ANY EVIDENCE THAT  
23 TOMMY CONSTANTINE EVER SAID ANYTHING DISPARAGING  
24 ABOUT YOU PRIOR TO THE SETTLEMENT NEGOTIATIONS  
25 BEING TERMINATED BY YOU?

0688

1 A. I DON'T KNOW.

2 Q. SO IN OTHER WORDS, YOU DON'T HAVE  
3 ANY EVIDENCE THAT HE'S EVER --

4 A. THE SETTLEMENT -- JUST TO BE CLEAR,  
5 THE SETTLEMENT NEGOTIATIONS WERE SUPPOSED TO -- WE  
6 WERE SUPPOSED TO HAVE A SETTLEMENT AGREEMENT  
7 PROBABLY IN MARCH.

8 WE DIDN'T. ENDED UP SENDING A  
9 LETTER TERMINATING THAT UNTIL MAY JUST BECAUSE WE  
10 COULDN'T JUST LEAVE IT HANGING. WE JUST WANTED TO  
11 MOVE ON AT THAT POINT.

12 Q. DO YOU HAVE ANY SPECIFIC EVIDENCE  
13 THAT YOU'RE AWARE OF THAT WOULD CAUSE PHIL KENNER  
14 TO GO TO JAIL?

15 MS. CROWTHER: OBJECTION. CALLS  
16 FOR A LEGAL CONCLUSION. I DON'T KNOW HOW HE WOULD  
17 KNOW THAT.

18 THE DEPONENT: WELL, I DIDN'T.  
19 BY MR. RICHARDS:

20 Q. WELL, YOUR LAY OPINION.

21 MS. CROWTHER: NO. DON'T  
22 SPECULATE.

23 MR. RICHARDS: WELL, HE SAID HE  
24 COMMITTED PERJURY.

25 THE DEPONENT: I KNOW HE DID THAT.

0689

1 BY MR. RICHARDS:

2 Q. OKAY. WELL, HOW DID HE DO THAT?

3 A. HE LIED UNDER OATH.

4 Q. WHERE?

5 A. IN -- EVERY TIME HE'S BEEN UNDER  
6 OATH.

7 Q. WELL, WHEN -- WHEN HE -- YOU SAID  
8 HE LIED IN MEXICO, THAT IS WHAT YOU SAID.

9 A. WELL, HE'S LIED IN THE UNITED  
10 STATES ALSO.

11 Q. AND WHAT DID HE LIE ABOUT?

12 A. HOW MANY EXAMPLES WOULD YOU LIKE ME  
13 TO GIVE YOU?

14 Q. WELL, I MEAN, IT'S -- WHEN YOU SAY  
15 SOMEONE'S COMMITTED PERJURY, I THINK IT'S  
16 REASONABLE TO KNOW WHAT THEY DID.

17 A. HE'S BEEN UNDER OATH QUITE A BIT,  
18 AND HE'S LIED EVERY TIME HE'S BEEN UNDER OATH.

19 Q. WELL, LET'S FACE IT, YOU'RE A LOT  
20 HARDER TO GET UNDER OATH THAN HE IS.

21 A. I TELL THE TRUTH.

22 Q. DO YOU WANT TO GIVE ME ANY EXAMPLES  
23 OF WHERE PHIL KENNER HAS COMMITTED PERJURY IN YOUR

24 OPINION?

25 A. OKAY. WHEN HE TRIED TO DESCRIBE --  
0690

1 I BELIEVE IT WAS THE NOLAN -- OWEN NOLAN  
2 ARBITRATION, WHEN HE TRIED TO DESCRIBE THE EQUITY  
3 SPLIT IN CABO.

4 AND HE SAID THAT IT WAS THREE DAYS  
5 BEFORE THE DEAL WAS SUPPOSED TO CLOSE, THAT WE  
6 SCAMMED HIM. AND THAT'S WHY HE HAS 39 PERCENT AND  
7 HIS PLAYERS HAVE 8 AND I HAVE 40 PERCENT.

8 THAT IF HE DIDN'T CAPITULATE -- AND  
9 I'M PARAPHRASING. I DON'T HAVE THE EXACT  
10 DOCUMENTS OR THE EXACT TRANSCRIPT.

11 BUT IF HE DIDN'T CAPITULATE AT THAT  
12 TIME, HE WOULD HAVE LOST THE ENTIRE INVESTMENT.  
13 THAT IS JUST A LIE.

14 Q. WHY IS THAT A LIE?

15 A. WELL, THERE'S AN E-MAIL IN FEBRUARY  
16 OF '06, WHICH IS THREE WEEKS EARLIER, WHERE PHIL  
17 OUTLINES WHAT THE EQUITY SPLIT IS.

18 Q. DID YOU PRODUCE THAT E-MAIL?

19 A. I'M SURE I DID.

20 Q. ALL RIGHT. AND THEN WHAT ELSE HAS  
21 HE COMMITTED PERJURY ABOUT?

22 A. WELL, IN THE GLEN MURRAY CASE, HE  
23 SAYS THAT HE'S NEVER HAD ANY INTEREST IN ANY PALMS  
24 UNITS. HE'S NEVER LENT ANY MONEY FOR ANY PALMS  
25 UNITS. HE'S NEVER CONTRIBUTED ANY MONEY TO ANY

0691  
1 PALMS UNITS. HE SAYS THAT UNDER OATH.

2 ON HIS FINANCIAL STATEMENTS, HE  
3 SAYS HE HAS INTEREST IN FOUR PALMS UNITS. AND HE  
4 ALSO HAS -- WE HAVE PAYMENTS THAT I'VE SEEN THAT  
5 HAVE GONE FROM HIS ACCOUNT TO THE CLOSING  
6 ATTORNEYS FOR THE PALMS UNIT.

7 SO WHETHER HE SAYS HE BOUGHT THEM,  
8 LENT MONEY OR WHATEVER HE DID, HE DID HAVE SOME  
9 INTEREST IN THE PALMS UNITS.

10 Q. DID -- DID TOMMY CONSTANTINE NOT  
11 TELL YOU THAT PHIL AND HIS CLIENTS WERE GOING TO  
12 SUE YOU IF THESE ISSUES DIDN'T GET RESOLVED, AND  
13 THEN YOU RESPONDED THAT YOU'RE NOT WORRIED BECAUSE  
14 IT'S A PROCESS?

15 A. NO. I SAID THE LAWSUITS ARE A  
16 PROCESS, AS WE'VE LEARNED.

17 TOMMY CONSTANTINE WOULD SAY THAT  
18 THEY'RE GOING TO STORM INTO LEHMAN'S OFFICES AND  
19 SAY EVERYTHING DISPARAGING AGAINST ME, WHICH IS A  
20 CONCERN OF MINE.

21 A LAWSUIT IS A PROCESS. A

22 LAWSUIT -- IF YOU WANT TO SUE ME, YOU HAVE TO GO  
23 THROUGH A PROCESS.

24 AND IF IT DOESN'T GET THE  
25 SENSATIONAL ATTENTION THAT THIS ONE DID, WE CAN GO

0692

1 THROUGH THE PROCESS, AND HOPEFULLY THE TRUTH AND  
2 THE RIGHT SIDE WINS. SO THAT'S THE PROCESS I  
3 TALKED ABOUT.

4 SO IF THEY WANTED TO SAY YOU WANT  
5 TO SUE ME FOR MISMANAGEMENT, THEN THAT'S A  
6 PROCESS, THAT YOU HAVE TO -- THAT YOU HAVE TO  
7 PROVE THAT THERE WAS MISMANAGEMENT.

8 THAT'S DIFFERENT THAN WALKING INTO  
9 THE CHAIRMAN OR THE C.E.O. OF LEHMAN AND SAYING --  
10 BASICALLY SAYING LIES ABOUT A PERSON. THAT'S A  
11 DIFFERENT PROCESS.

12 Q. WHY WOULD -- WHAT WOULD BE THE  
13 MOTIVATION -- OR WERE YOU EVER TOLD ANY MOTIVATION  
14 WHY PHIL OR HIS CLIENTS -- WELL, LET'S JUST DEAL  
15 WITH PHIL BECAUSE THAT SEEMS TO BE THE PERSON  
16 YOU'RE DEALING WITH -- WHY PHIL WOULD HAVE THE  
17 MOTIVATION TO LIE ABOUT YOU TO LEHMAN?

18 A. BECAUSE HE WANTED -- AT THE TIME I  
19 BELIEVE HE THOUGHT SOMEHOW HE WAS GOING TO BE ABLE  
20 TO GET CONTROL OF THE PROJECT.

21 AND HE FELT BY SAYING THESE THINGS  
22 TO ME, ABOUT ME, WOULD DAMAGE ME ENOUGH WHERE I'D  
23 EITHER HAVE TO TURN THE -- MAKE HIM A MANAGING  
24 MEMBER OR MAKE TOMMY A CO-MANAGING MEMBER OR MAKE  
25 TOMMY A MANAGING MEMBER.

0693

1 BUT I DON'T KNOW WHAT HIS -- WHAT  
2 HE ACTUALLY THOUGHT WAS GOING TO HAPPEN BY WALKING  
3 IN THERE OTHER THAN CREATING A HUGE MESS, WHICH IS  
4 EXACTLY WHAT THIS LAWSUIT IN JUNE HAS DONE.

5 IT HAD THE SAME EFFECT AS WALKING  
6 INTO THE C.E.O. OF LEHMAN A YEAR AND A HALF AGO.

7 Q. WELL, DID -- DID PHIL TELL YOU,  
8 EVER, HE WANTED TO BE A MANAGING MEMBER?

9 A. HAS HE TOLD THAT?

10 Q. YEAH. EVER.

11 A. WELL, HE KNEW THAT HE WASN'T GOING  
12 TO BE ABLE TO BE THE MANAGING MEMBER.

13 Q. WELL, OF COURSE. YOUR AGREEMENT  
14 MAKES YOU THE MANAGING MEMBER.

15 A. NO. HE KNEW LEHMAN WOULD NEVER  
16 ALLOW HIM TO BE A MANAGING MEMBER.

17 Q. SO THEN -- SO THE OTHER ANSWER IS:  
18 NO, PHIL NEVER TOLD YOU HE WANTED TO BE MANAGING  
19 MEMBER?



20 A. HE WANTED TOMMY TO BE CO-MANAGING  
21 MEMBER. HE WANTED TOMMY TO BE MANAGING MEMBER.  
22 AND THEN WHEN THAT WASN'T GOING TO HAPPEN, HE  
23 WANTED TO BE CO-MANAGING MEMBER.

24 Q. WHO TOLD YOU THAT SPECIFICALLY?

25 A. TOMMY.

0694

1 Q. DID PHIL EVER TELL YOU THAT?

2 A. I WASN'T TALKING TO PHIL AT THAT  
3 TIME.

4 Q. OKAY. SO THE ANSWER IS: NO, PHIL  
5 NEVER TOLD YOU?

6 I WANT TO MAKE SURE WE'RE CLEAR FOR  
7 THE RECORD.

8 DID PHIL KENNER EVER TELL YOU AT  
9 ANY TIME HE WANTED TO BE MANAGING MEMBER?

10 A. THAT HE WANTED TO BE?

11 Q. YEAH. PHIL.

12 A. NO.

13 Q. NO, NO. OKAY.

14 A. WHICH IS ALSO PART OF THAT WHOLE  
15 PERJURY, WHEN HE SAYS IN ONE OF HIS TESTIMONIES  
16 THAT HE WAS SUPPOSED TO BE A MANAGING MEMBER WITH  
17 ME, AND THEN THAT WAS TAKEN AWAY FROM HIM, TOO.  
18 THAT'S ANOTHER LIE.

19 Q. WELL, DOES --

20 A. AND ALSO -- I MEAN, IF YOU WANT ME  
21 TO GO BACK, I CAN -- I'LL START TO THINK OF ALL  
22 THE THINGS HE'S LIED ABOUT. IF YOU'D LIKE ME TO  
23 CONTINUE TO SAY THEM, THERE'S QUITE A FEW.

24 Q. I WOULD BE VERY GRATEFUL IF YOU'D  
25 DO THAT.

0695

1 A. OKAY. ALL RIGHT. YOU WANT ME TO  
2 NOW?

3 Q. YES.

4 A. THE DOCUMENT IN THE ARIZONA CASE,  
5 THE FORGED DOCUMENT. HE HAS AN ENTIRE TESTIMONY  
6 BASED ON A LIE.

7 IT'S A FORGERY. I NEVER SIGNED THE  
8 DOCUMENT. I'VE NEVER -- I NEVER SAW THE DOCUMENT  
9 UNTIL HE PRODUCED IT. THAT'S AN -- THAT'S AN  
10 ENTIRE TESTIMONY THAT HE'S PUT IN FRONT OF FEDERAL  
11 COURT.

12 HE PRODUCED A DOCUMENT IN FRONT OF  
13 FEDERAL COURT AND SAID JOHN KAISER WAS THE ONE WHO  
14 HAD THE ORIGINAL. THAT WAS HIS FIRST STORY. AND  
15 HE CHANGED THAT STORY.

16 HE SAID HE DID IT ON A COMPUTER,  
17 THAT WE LATER FOUND OUT THAT HE DIDN'T EVEN OWN AT

18 THE TIME THIS THING WAS DONE. AND HE CHANGED THAT  
19 STORY.

20 I BELIEVE THAT THERE'S ENOUGH  
21 EVIDENCE TO SHOW THAT HE LIED -- HE -- HE -- HE  
22 PUT UP FORGED DOCUMENTS IN FRONT OF THE FEDERAL  
23 COURT.

24 I BELIEVE THAT IF THAT CASE WASN'T  
25 DISMISSED, THEN IT WOULD HAVE SHOWN FOR THAT TO BE  
0696

1 A FORGERY AND FOR PHIL TO HAVE PERJURED HIMSELF IN  
2 A WHOLE DAY'S WORTH OF TESTIMONY.

3 Q. WELL -- ANYTHING ELSE?

4 A. OH, THERE'S A LOT.

5 Q. I'M ENTITLED TO GET ALL OF THE  
6 INFORMATION THAT YOU HAVE, SO IT DOESN'T COME OUT  
7 LATER.

8 A. I'LL PREPARE A DOCUMENT FOR YOU SO  
9 I CAN HAVE THE ACTUAL TRANSCRIPTS. SO I CAN -- IF  
10 I READ THE TRANSCRIPT, I CAN GO THROUGH, ONE AFTER  
11 ANOTHER. IF THAT'S WHAT YOU'D LIKE, I'D BE HAPPY  
12 TO DO THAT.

13 Q. DID YOU HIRE AN EXPERT IN THAT CASE  
14 TO CONFIRM WHETHER OR NOT IT WAS A FORGERY?

15 MS. CROWTHER: I'LL JUST OBJECT TO  
16 THE EXTENT THAT AN EXPERT WAS ENGAGED BY COUNSEL.  
17 AND ANY DECISIONS WE'VE MADE ABOUT AN EXPERT  
18 WAS -- THE DISCUSSION OF COUNSEL.

19 IF THERE'S A PUBLIC RECORD OF IT,  
20 YOU CAN GO AHEAD AND DISCLOSE IT. BUT DON'T  
21 DISCLOSE COMMUNICATIONS WITH COUNSEL.

22 THE DEPONENT: IT WAS ENGAGED BY  
23 COUNSEL.

24 MR. RICHARDS: NO. BUT THERE WAS A  
25 PUBLIC RECORD OF IT.

0697  
1 MS. CROWTHER: I SAID IF THERE'S A  
2 PUBLIC RECORD, HE CAN DISCLOSE IT.

3 MR. RICHARDS: YEAH.

4 THE DEPONENT: HE SAID IT HAD  
5 CHARACTERISTICS OF A FORGERY, BUT HE NEEDED THE  
6 ORIGINAL.

7 BY MR. RICHARDS:

8 Q. SO IT WAS INCONCLUSIVE?

9 A. HE NEEDED THE ORIGINAL, WHICH PHIL  
10 SAID JOHN KAISER HAD. AND HE'S SINCE CHANGED THAT  
11 STORY. I DON'T KNOW WHO HE SAYS HAS THE ORIGINAL  
12 NOW.

13 Q. ALL RIGHT. DID TOMMY CONSTANTINE  
14 EVER TELL YOU HE WANTED TO BE MANAGER?

15 A. YES.

16 Q. AND DID HE TELL YOU WHY HE WANTED  
17 TO BE MANAGER?

18 A. BECAUSE HE THOUGHT I WAS  
19 MISMANAGING THE PROPERTY.

20 Q. WHEN DID HE TELL YOU THAT?

21 A. MOSTLY THROUGHOUT 2007.

22 Q. WELL, ON --

23 A. WELL, LET ME -- SORRY.

24 I'D HAVE TO THINK AT WHAT POINT

25 TOMMY WOULD -- HE WAS CAREFUL TO REMAIN FRIENDLY

0698

1 WITH ME.

2 SO WHEN HE WOULD SAY THINGS, HE  
3 WOULD SAY THEM AS IF THEY'RE COMING FROM  
4 PHIL KENNER. SO I DON'T KNOW EXACTLY WHEN HE  
5 WOULD SAY THAT HE TAUGHT I WAS MISMANAGING THE  
6 PROPERTY. SO --

7 Q. DO YOU -- DO YOU HAVE ANY E-MAIL  
8 FROM TOMMY CONSTANTINE STATING THAT YOU MISMANAGED  
9 THE PROPERTY?

10 A. I DON'T KNOW.

11 Q. CAN YOU RECALL ANY SPECIFIC  
12 CONVERSATION WITH TOMMY CONSTANTINE WHERE HE TOLD  
13 YOU THAT -- FROM HIM THAT YOU WERE MISMANAGING THE  
14 PROPERTY?

15 A. I DON'T KNOW.

16 Q. DIDN'T YOU -- DIDN'T  
17 TOMMY CONSTANTINE KNOW FROM THE BEGINNING, FROM  
18 HIS DISCUSSIONS WITH YOU, THAT LEHMAN INDICATED  
19 PHIL COULDN'T BE THE MANAGER OF THE PROPERTY?  
20 WASN'T THAT A FACT WELL KNOWN FROM THE VERY  
21 BEGINNING?

22 A. I BELIEVE SO.

23 Q. SO DIDN'T -- DID TOMMY CONSTANTINE  
24 SUGGEST THAT HE BE A CO-MANAGER AS A SUBSTITUTE  
25 FOR PHIL SO THE PLAYERS WOULD HAVE SOMEBODY THEY

0699

1 FELT WAS LOOKING OUT FOR THEIR INTERESTS? WAS  
2 THAT SORT OF THE RATIONALE?

3 A. PART OF IT, YES.

4 Q. DID -- ON THE -- ON THE SETTLEMENT  
5 AGREEMENT THAT YOU CLAIM THAT YOU AGREED UPON,  
6 WHAT -- DID IT CALL FOR YOU AND TOMMY CONSTANTINE  
7 TO BE CO-MANAGERS?

8 A. YES.

9 Q. SO AT LEAST IN THEORY, THAT -- THAT  
10 DIDN'T SOUND LIKE A PROBLEM TO YOU AT THAT POINT;  
11 RIGHT?

12 A. IT WAS A BIG PROBLEM TO ME, BUT I  
13 WAS UNDER A HUGE -- I WAS UNDER A THREAT THAT

14 ENTIRE YEAR. IF THERE WAS NO THREAT OF HIM --  
15 PHIL DOING EXACTLY WHAT HE'S DONE, THEN I WOULD  
16 NEVER HAVE CONSIDERED IT.

17 Q. WELL, ARE YOU SAYING THAT IT WAS  
18 YOU THAT DECIDED AT THE END NOT TO DO THE  
19 SETTLEMENT, OR IT WAS PHIL THAT DECIDED TO DO  
20 THE -- WHO REJECTED THE LAST SETTLEMENT?

21 A. WELL, THERE WAS AN E-MAIL THAT SAID  
22 IT WAS GOING TO HAVE PHIL'S SIGNATURE. THEY ONLY  
23 NEEDED TO LOOK AT TWO SMALL SECTIONS. AND WE  
24 NEVER GOT PAST THAT.

25 WE HAD AGREED TO EVERYTHING. PHIL

0700

1 WAS LOOKING AT TWO LAST SECTIONS IN AN E-MAIL FROM  
2 TOMMY CONSTANTINE. IT NEVER CAME -- IT NEVER WENT  
3 PAST THAT.

4 Q. NOW -- BUT -- NOW, LEHMAN  
5 DOESN'T -- I MEAN DANSKE BANK DOESN'T HAVE THE  
6 SAME RESTRICTIONS THAT LEHMAN -- ARE YOU SAYING  
7 THAT IN THE DOCUMENTS IT SAID PHIL KENNER COULDN'T  
8 BE A MANAGER?

9 A. NO.

10 Q. THEN WHY COULDN'T PHIL KENNER JUST  
11 BE A CO-MANAGER, LIKE YOU WERE IN OTHER DEALS?

12 A. AS I SAID, LEHMAN HAD A BAD  
13 EXPERIENCE WITH PHIL IN 2005 AND DIDN'T WANT TO  
14 HAVE TO DEAL WITH IT.

15 Q. I SEE.

16 WHO REJECTED THE FIRST SETTLEMENT  
17 THAT WENT TO LEHMAN?

18 A. I DON'T KNOW.

19 Q. WHAT WAS THE -- DO YOU REMEMBER  
20 GENERALLY WHAT THE TERMS OF THIS AGREED-UPON  
21 SETTLEMENT THAT YOU AGREED TO?

22 A. I BELIEVE IT WAS A REDUCTION IN MY  
23 EQUITY IN EXCHANGE FOR A CASH PAYMENT. I'M NOT  
24 SURE WHAT THE FINAL -- THE FINAL NUMBER WAS.  
25 INDEMNIFICATION FROM EVERYONE THAT PHIL'S

0701

1 ASSOCIATED WITH. AND TOMMY BEING CO-MANAGER.

2 Q. WAS IT -- WAS THERE ANYBODY BESIDES  
3 MASOOD BHATTI THAT HAD A PROBLEM WITH PHIL?

4 MS. CROWTHER: OBJECTION. LACKS  
5 FOUNDATION.

6 BY MR. RICHARDS:

7 Q. FROM LEHMAN?

8 A. I DON'T KNOW.

9 Q. WELL, DO YOU KNOW WHICH PERSON AT  
10 LEHMAN DIDN'T LIKE PHIL?

11 A. I DON'T KNOW.

12 Q. WELL, FOR WHATEVER IT'S WORTH, I  
13 THINK YOU'RE WRONG ABOUT TOMMY IN HIS FEELINGS  
14 ABOUT YOU. FOR WHATEVER IT'S WORTH.

15 I DON'T -- SPECIFICALLY, HAVE YOU  
16 EVER SPOKEN TO TOMMY CONSTANTINE, WHERE HE SAID  
17 SOMETHING INSULTING TO YOU?

18 A. NO. BUT I'VE SPOKEN TO PEOPLE WITH  
19 DANSKE BANK AND PEOPLE AT LEHMAN BROTHERS WHO'VE  
20 SAID THAT HE WAS EXTREMELY INSULTING TOWARD ME.

21 AND I DON'T THINK THEY WOULD HAVE  
22 REASON TO MAKE THAT UP.

23 Q. WELL, DOES -- DID -- DO YOU KNOW  
24 SPECIFICALLY WHO TOLD YOU THIS AT LEHMANS OR  
25 DANSKE BANK?

0702

1 A. YES.

2 Q. WHO'S THAT?

3 A. I BELIEVE THE PERSON AT LEHMAN WAS  
4 CHAD DIMARTINO.

5 Q. AND WHAT DID MR. DIMARTINO SAY?

6 A. I DON'T REMEMBER SPECIFICALLY. AND  
7 HE DIDN'T WANT TO GET INTO THE DETAILS.

8 Q. OKAY. SO HE DIDN'T TELL YOU, LIKE,  
9 A SPECIFIC STATEMENT. HE JUST SAID,  
10 "TOMMY CONSTANTINE DIDN'T SPEAK HIGHLY OF YOU";  
11 RIGHT?

12 A. NO. HE SAID, "TOMMY CONSTANTINE  
13 BASICALLY" -- IT WAS STRONGER THAN "DIDN'T SPEAK  
14 HIGHLY OF YOU." LET'S PUT IT THAT WAY. HE  
15 WOULDN'T GET INTO THE DETAILS.

16 Q. BUT YOU DON'T KNOW WHAT HE SAID?

17 A. NO. I'D LIKE TO GET A RECORD OF  
18 WHAT HE SAID. I WOULD IMAGINE THAT WOULD BE  
19 HELPFUL.

20 Q. WELL, DO YOU THINK THAT  
21 TOMMY CONSTANTINE WAS FRUSTRATED THAT THE  
22 SETTLEMENT DIDN'T GO THROUGH, AND THEN YOU -- YOU  
23 HIRED THAT ESMEERALD MARKETING COMPANY?

24 IN THE TERMINATION LETTER YOU  
25 MENTION THAT YOU --

0703

1 A. GREENWICH GROUP.

2 Q. GREENWICH GROUP.

3 ARE THEY FROM CONNECTICUT?

4 A. NO. FROM NEW YORK.

5 Q. OKAY. WHY DOES ALL THIS BUSINESS  
6 GO TO EAST COASTERS? JUST OUT OF CURIOSITY.

7 MS. CROWTHER: OBJECTION. VAGUE AS  
8 TO "THIS BUSINESS."  
9 BY MR. RICHARDS:

10 Q. LIKE, JUST BUSINESS WITH DIAMANTE.  
11 EVERYTHING SEEMS TO BE ON THE EAST COAST.

12 A. LIKE WHAT?

13 Q. THE ACCOUNTING, THE LAWYERS, THE  
14 PEOPLE THAT DRAFTED ALL THESE AGREEMENTS, THE  
15 MARKETING.

16 A. THE FUNDING.

17 Q. YEAH.

18 A. WELL, THAT'S WHERE WE WERE BASED.

19 Q. ALL RIGHT. IT'S NOT THAT YOU HAVE  
20 SOMETHING AGAINST WEST COASTERS; RIGHT?

21 A. NO.

22 Q. ALL RIGHT.

23 A. NOT ALL OF THEM.

24 Q. NOW, HAVE YOU -- DID YOU EVER  
25 CONTACT TOMMY CONSTANTINE AFTER YOU HEARD THESE

0704

1 STATEMENTS AND ASK HIM IF HE SAID SOMETHING  
2 NEGATIVE ABOUT YOU TO EITHER BANK?

3 A. NO.

4 Q. SO IS THERE A REASON WHY YOU DIDN'T  
5 CALL TOMMY CONSTANTINE TO CLARIFY WHETHER OR  
6 NOT -- WELL, YOU -- WAIT. LET ME STRIKE THAT.  
7 YOU SAID THAT YOU THOUGHT  
8 TOMMY CONSTANTINE AND YOU WERE FRIENDS. AFTER  
9 THESE 18 MONTHS EVOLVED, YOU GUYS BECAME FRIENDS;  
10 RIGHT?

11 A. I THOUGHT THAT HE WAS LOOKING OUT  
12 FOR THE BEST INTERESTS OF BOTH PHIL AND I, YES.

13 Q. OKAY. AND DID -- AFTER THE  
14 SETTLEMENT AGREEMENT BROKE DOWN, DID YOU -- WHAT  
15 WAS THE REASON WHY YOU DIDN'T WANT TO CALL  
16 TOMMY CONSTANTINE AND SAY, "HEY, WHAT'S" --  
17 "YOU'RE BAD-MOUTHING ME NOW TO THE BANK? YOU  
18 KNOW, I THOUGHT WE WERE LOOKING INTO THE BEST  
19 INTEREST OF THE -- OF EVERYBODY"?

20 WHY DIDN'T YOU AT LEAST GIVE THEM  
21 SOME -- CLEAR IT UP? WAS THERE A REASON?

22 A. THERE WAS NO REASON TO DO THAT. I  
23 HAD -- I BEGAN TO HAVE SUSPICIONS ABOUT TOMMY,  
24 AFTER A WHILE, ANYWAY.

25 AND I JUST THOUGHT THAT IF I TALKED

0705

1 TO HIM, HE WOULD GIVE ME A 30-MINUTE SPIEL. HE'S  
2 VERY GOOD AT MAKING EXPLANATIONS AND -- AND --

3 Q. YOU'VE GOT TO CUT HIM OFF.

4 A. WELL, IT'S JUST THERE WAS -- THERE  
5 WAS NO POINT AT THAT TIME. TOMMY AND I HAD TALKED  
6 ENOUGH.

7 Q. I SEE.

8 WHAT WAS THE REASON WHY LEHMAN  
9 REFUSED TO ALLOW YOU TO SIGN THE FIRST DEAL THAT  
10 YOU GUYS HAD ACTUALLY AGREED TO, YOU AND KENNER?

11 A. I DON'T KNOW.

12 Q. WELL, DON'T YOU -- YOU DO REMEMBER  
13 AT ONE POINT YOU HAD WHAT WE CALL AN ACCORD -- AN  
14 ACCORD WITH ONE ANOTHER. YOU ACTUALLY CAME TO A  
15 DEAL THAT WAS THEN SUBMITTED TO LEHMANS, AND THEN  
16 THEY REJECTED IT?

17 A. I DON'T KNOW.

18 Q. ARE YOU -- YOU DON'T REMEMBER  
19 THAT --

20 A. THERE WAS SEVERAL ITERATIONS OF A  
21 SETTLEMENT AGREEMENT. WE HAD AGREED TO THE LAST  
22 ONE. WHY LEHMAN WOULD AGREE OR NOT AGREE IS -- I  
23 WOULD HAVE NO IDEA.

24 Q. DID YOU EVER -- DID YOU EVER --  
25 ONCE LEHMAN WENT BANKRUPT, AND THEN THERE WAS THIS

0706

1 KIND OF HOLDING PATTERN, DID YOU EVER THINK OF  
2 REAPPROACHING DANSKE OR WHOEVER BOUGHT THE LOAN?

3 A. I DON'T UNDERSTAND THE QUESTION.

4 Q. LET ME BACK UP.

5 HOW DID YOU FIRST FIND OUT THAT  
6 DANSKE BANK PURCHASED THE LOAN FROM LEHMAN  
7 BROTHERS?

8 A. THROUGH SOMEONE AT LEHMAN. I  
9 DON'T -- I'M NOT SURE WHO.

10 Q. DO YOU KNOW -- WHERE DID THEY  
11 PURCHASE IT? OUT OF THE BANKRUPTCY?

12 A. I BELIEVE IT WAS PART OF COLLATERAL  
13 THAT THEY HELD, SO IT WAS -- THEY BASICALLY  
14 REPOSSESSED THE LOAN.

15 Q. AND THEN WHO -- WHO REPOSSESSED IT?

16 A. WELL, IT WAS USED -- IT WAS PART OF  
17 COLLATERAL THAT DANSKE BANK HELD. THIS ASSET WAS  
18 COLLATERAL THAT DANSKE BANK HELD. SO WHEN LEHMAN  
19 WENT BANKRUPT, IT WAS -- IT BECAME THEIR PROPERTY.

20 Q. AND THEN WHAT DID YOU -- LEHMAN  
21 TOLD YOU NOW THE BANK'S GOING TO BE DEALING WITH  
22 YOU?

23 A. THEY TOLD US THAT NOW WE HAVE TO  
24 DEAL WITH DANSKE BANK, YES.

25 Q. OKAY. AND THEN -- SO YOU HAD TO --

0707

1 DO YOU THINK DANSKE BANK -- DO YOU THINK  
2 DANSKE BANK IS HAPPY WITH YOU RIGHT NOW? HAVE  
3 THEY EXPRESSED AN OPINION AS FAR AS YOUR STATUS  
4 THERE?

5 A. I THINK THEY'RE VERY HAPPY WITH US,

6 YES.

7 Q. TELL ME WHY. WHAT ARE YOU BASING  
8 THAT ON?

9 A. BASING IT ON WE GAVE THEM A BUDGET  
10 IN MARCH AND AGGRESSIVE AS TO WHAT WE NEEDED TO  
11 DO. AND THEY FEEL THAT WE'VE ACCOMPLISHED  
12 EVERYTHING THAT WE WERE SUPPOSED TO ACCOMPLISH ON  
13 TIME AND ON BUDGET.

14 Q. DID -- DID DANSKE BANK INDICATE HOW  
15 LONG -- DID THEY INDICATE HOW LONG THAT THEY WANT  
16 TO -- INDICATE HOW LONG THEY WOULD WANT TO BE  
17 INVOLVED AS A LENDER ON THIS PROJECT?

18 A. NO.

19 Q. DO YOU KNOW WHO PETER HUGHES'S BOSS  
20 IS?

21 A. NO.

22 Q. YOU'VE NEVER MET ANYBODY ABOVE  
23 PETER HUGHES?

24 A. I DON'T KNOW THE HIERARCHY. I'VE  
25 MET OTHER PEOPLE THAT WORK AT DANSKE BANK. I

0708

1 DON'T KNOW.

2 Q. WHERE IS DANSKE BANK'S OFFICES?  
3 HAVE YOU EVER BEEN THERE?

4 A. YES.

5 Q. WHERE ARE THEY LOCATED?

6 A. THE BANK -- THE OFFICE THAT WE DEAL  
7 WITH IS IN LONDON.

8 Q. SO DO YOU FLY TO LONDON TO MEET  
9 THEM?

10 A. I HAVE.

11 Q. AND WHY DID YOU FLY TO LONDON?

12 A. BECAUSE, FOR WHATEVER REASON, A  
13 FACE-TO-FACE MEETING WAS NECESSARY.

14 Q. DID THEY -- DID THEY -- SO THEY  
15 TOLD YOU THAT YOU HAD TO HAVE A FACE-TO-FACE  
16 MEETING?

17 A. I'M NOT SURE IF THEY DEMANDED A  
18 FACE-TO-FACE MEETING. BUT FOR WHATEVER REASON, IT  
19 WAS DETERMINED THAT A FACE-TO-FACE MEETING WOULD  
20 BE THE MOST PRODUCTIVE THING TO DO.

21 Q. WHO ELSE HAVE YOU SPOKEN WITH AT  
22 THE BANK BESIDES PETER HUGHES?

23 A. DAVID DANIEL.

24 Q. ANYONE ELSE?

25 A. I DON'T REMEMBER NAMES.

0709

1 Q. DOES DANSKE BANK HAVE ITS EXEC'S  
2 COME DOWN AND PLAY GOLF AT THE GOLF COURSE?

3 A. THEY HAVE NOT.



4 Q. WHAT, NOBODY'S BEEN DOWN THERE FROM  
5 DANSKE BANK AND SEEN IT?

6 A. THEY HAVE BEEN DOWN TO SEE IT, YES.

7 Q. WHO? PETER HUGHES AND DAVID?

8 A. YES.

9 Q. ANYBODY ELSE?

10 A. NOT THE GOLF COURSE, NO. THERE'S  
11 TWO OTHER GENTLEMAN -- I DON'T REMEMBER NAMES --  
12 THAT CAME DOWN THE FIRST TIME.

13 Q. AND DOES DANSKE BANK -- DID  
14 DANSKE BANK REQUIRE ANY -- DID THEY ASK YOU ABOUT  
15 THIS LAWSUIT?

16 A. YES.

17 Q. AND WHEN WAS THAT?

18 A. WELL, THEY ASKED ME ABOUT THE  
19 ARIZONA LAWSUIT, WHEN THAT HAPPENED, BECAUSE AT  
20 THAT TIME WE HADN'T RESTRUCTURED THE LOAN. SO  
21 THAT WAS A MAJOR ISSUE THAT WE NEEDED TO GET BY.

22 AND THEN WHEN THIS -- WHEN I WAS  
23 MADE AWARE THAT THIS WAS COMING OUT, I BASICALLY  
24 SENT THEM AN E-MAIL TO TRY TO BRACE THEM FOR THE  
25 NEW YORK POST ARTICLE.

0710

1 AND LUCKILY WE -- THEY'VE BEEN  
2 SUPPORTIVE. UNFORTUNATELY, I BELIEVE THAT THEY  
3 WERE ISSUED A SUBPOENA BY THE S.E.C. ALSO FOR ALL  
4 THEIR RECORDS.

5 AND, UNFORTUNATELY, I THINK WE JUST  
6 GOT A BILL FOR CLOSE TO 100,000 DOLLARS FOR THEIR  
7 LEGAL TO JUST TAKE CARE OF THE SUBPOENA.

8 Q. OH, REALLY?

9 A. YES.

10 Q. WHO REFERRED YOU TO ROBYN CROWTHER?

11 A. MY ATTORNEY.

12 Q. IS THAT -- I JUST WANTED TO SEE IF  
13 DANSKE REFERRED YOU.

14 A. NO.

15 Q. WHICH ATTORNEY?

16 A. TOM HARVEY.

17 Q. DID -- SO DO YOU HAVE TO NOW PAY  
18 DANSKE BANK OUT OF THE MONTHLY DRAW THAT YOU -- IS  
19 THAT PART OF THE BUDGET THAT YOU'RE BORROWING?

20 A. YES.

21 Q. WHO'S THE ATTORNEY THAT YOU HAVE  
22 WITH -- THAT'S REPRESENTING YOU WITH THE S.E.C.?

23 MS. CROWTHER: OBJECTION. ASKED  
24 AND ANSWERED.

25 MR. RICHARDS: OH, THAT WAS --

0711

1 YOU'RE RIGHT. SORRY.

2 BY MR. RICHARDS:

3 Q. IS THERE ANYTHING THAT'S PREVENTING  
4 ANY OF THE PARTNERS OR THEIR MEMBERS IN THIS  
5 PROJECT FROM COMING TO VISIT THE SITE?

6 A. NO.

7 Q. SO IF -- IF ANY OF MY CLIENTS OR  
8 PHIL KENNER WANTED TO COME LOOK AT THE PROJECT,  
9 WOULD THEY BE ALLOWED IN?

10 A. PHIL KENNER WOULD BE ALLOWED IN BY  
11 HIMSELF, BUT I'D BE WANTING TO KNOW WHO HE WAS  
12 BRINGING IN AND WHAT HIS -- WHAT HIS REASONS WERE.  
13 HE'S HAD -- HE'S HAD MOTIVES THAT I  
14 DON'T CONSIDER BENEFICIAL TO THE PROPERTY IN THE  
15 LAST YEAR AND A HALF OR SO. I'M SURE YOU CAN  
16 UNDERSTAND.

17 Q. SO HE CAN COME BY HIMSELF AND LOOK  
18 AROUND?

19 A. IF HE WANTED TO CALL ME AND SAY HE  
20 WANTED TO COME BY AND HE WANTED TO COME IN, I'M  
21 SURE THAT WE COULD HAVE HIM IN AND SHOW HIM WHAT  
22 WE WERE DOING.

23 Q. COULD HE BRING JUST, LIKE, A --  
24 LIKE A HELPER SO HE DOESN'T END, YOU KNOW, UP IN A  
25 SAND DUNE?

0712

1 A. I'LL HAVE SOMEBODY -- WE'LL HAVE  
2 SOMEBODY HELP HIM.

3 Q. NO. I MEANT LIKE SOMEONE THAT  
4 DOESN'T WORK FOR YOU.

5 A. DEPENDS WHO IT IS.

6 Q. IF WE PRECLEARED IT, LIKE A  
7 SECURITY PERSON?

8 A. I DON'T WANT TO SOUND -- YOU HAVE  
9 TO UNDERSTAND WHAT WE DEALT WITH.

10 Q. YEAH.

11 A. AND HE SAID A LOT OF THINGS TO A  
12 LOT OF PEOPLE THAT HAVE BEEN HURTFUL. HE'S DONE  
13 DAMAGE TO THE PROJECT.

14 SO PLEASE DON'T MAKE IT SEEM LIKE I  
15 WANT TO BE EXCLUDING ANYONE FROM WHAT THEY SHOULD  
16 RIGHTFULLY BE ABLE TO DO. I JUST THINK THAT WE  
17 NEED TO BE CAREFUL AS TO WHAT HE DOES ON THE  
18 PROPERTY.

19 Q. WELL, HE -- HE OWNS 47 PERCENT OF  
20 IT, SO HE -- HE CERTAINLY HAS A STAKE IN IT; ISN'T  
21 THAT FAIR TO SAY?

22 A. YOU WOULD -- YOU WOULD THINK THAT  
23 HE WOULD ACT IN THE BEST INTERESTS OF THE PROJECT  
24 AT ALL TIMES BECAUSE HE DOES.

25 BUT IT'S BEEN MY OPINION, ALONG

0713

1 WITH, I'M SURE, MANY PEOPLE'S OPINION, THAT HE HAS  
2 NOT ACTED IN THAT MANNER.

3 SO, UNFORTUNATELY, WE HAVE TO MAKE  
4 MEASURES THAT WE WOULDN'T NORMALLY HAVE TO DO.

5 Q. ARE ANY OF MY CLIENTS, THE  
6 PLAINTIFFS IN THIS CASE, ALLOWED TO COME TO THE  
7 PROPERTY WITH THEIR SPOUSES OR SIGNIFICANT OTHERS?

8 A. I WOULD LOVE THAT.

9 Q. SO I CAN EXTEND THAT INVITATION?

10 A. ABSOLUTELY.

11 Q. CAN THEY PLAY GOLF THERE FOR FREE?

12 A. THAT WOULD BE GREAT. I'D LIKE TO  
13 REACH A SETTLEMENT WITH THEM, AND I'D LIKE TO HAVE  
14 THIS MATTER RESOLVED.

15 AND I'D LIKE TO KNOW THAT WE'RE ALL  
16 IN THE SAME -- WORKING FOR THE SAME GOAL. I DON'T  
17 BELIEVE THAT WE HAVE BEEN.

18 Q. WOULD -- WOULD YOU CONSIDER THAT  
19 CONSISTENT WITH YOUR BUSINESS PHILOSOPHY, IF MY  
20 CLIENTS WANTED TO MEET WITH YOU MONTHLY TO DISCUSS  
21 THE ISSUES DOWN AT THE PROJECT?

22 A. I THINK THAT WOULD BE GREAT.

23 AGAIN, AS LONG AS WE HAVE A  
24 RESOLUTION AND I FEEL THAT WE'RE ALL ON THE SAME  
25 TEAM, WORKING FOR THE SAME GOAL. I HAVE NOT HAD

0714

1 THAT IMPRESSION.

2 Q. WHAT ABOUT THE IDEA OF HAVING  
3 SOMEONE THAT WOULD -- THAT YOU COULD AGREE ON  
4 CONCEPTUALLY THAT WOULD HAVE ACCESS TO THE SAME  
5 SORT OF DATA AND INFORMATION THAT YOU HAVE, SO IF  
6 THERE WAS SOMETHING THAT WAS OBJECTIONABLE, YOU  
7 COULD AT LEAST GET THE FEEDBACK FROM YOUR  
8 47 PERCENT PARTNERS?

9 A. IF THEY CAME DOWN ON A MONTHLY  
10 BASIS, AND SOMEONE WANTED TO LOOK AT EVERYTHING IN  
11 A SPOT, I'M SURE THAT WE COULD.

12 IT'S GOING TO TAKE -- YOU'RE ASKING  
13 SOMETHING THAT'S ASSUMING THAT WE'RE GOING TO HAVE  
14 AN AMICABLE RESOLUTION.

15 THIS HAS BEEN EXTREMELY CONTENTIOUS  
16 AND EXTREMELY HURTFUL ON MY SIDE, AT LEAST FOR ME  
17 PERSONALLY.

18 SO YOU'RE ACTING -- YOU'RE ACTING  
19 AS IF THAT'S ALL DONE AND GONE, AND IT'S JUST A --  
20 KIND OF A DO-OVER. SO IT DOESN'T -- I DON'T KNOW  
21 WHAT THE -- WHAT THE RESOLUTION IS GOING TO BE.

22 IT'S MY HOPE THAT WE CAN GET THIS  
23 RESOLVED, AND WE CAN ALL MOVE ON WITH OUR LIVES.

24 BUT YOU'RE ASKING ME TO ASSUME THAT. AND I -- AND  
25 UNTIL WE GET TO THAT POINT, IT'S VERY HARD FOR ME  
0715

1 TO TRUST ANYBODY THAT'S -- THAT'S DONE THIS TO ME.  
2 Q. WELL, MR. JOWDY, I JUST -- YOU  
3 SHOULD BE AWARE THAT -- THAT MY FIRM ESPECIALLY  
4 DOESN'T HAVE A POLICY OF JUST LITIGATING CASES SO  
5 WE MAKE MONEY.

6 LIKE I SAID, I HAVE A LOT OF FILES,  
7 AND THIS IS NOT PROVIDING A BUSINESS SOLUTION FOR  
8 MY CLIENTS.

9 SO IT TOOK LITERALLY A VERY LONG  
10 TIME BECAUSE OF AGGRESSIVE LEGAL POSITIONS JUST TO  
11 GET YOUR DEPOSITION. SO I COULDN'T TALK TO YOU  
12 BECAUSE YOU'RE REPRESENTED BY COUNSEL.

13 BUT I CAN ASSURE YOU THAT IF THINGS  
14 WOULD HAVE BEEN DIFFERENT ON YOUR END, WE WOULD  
15 HAVE MET A LOT SOONER, WENT TO MEDIATION A LOT  
16 SOONER.

17 BUT YOU -- YOUR LAWYERS DID A VERY  
18 GOOD JOB OF FILING A LOT OF DIFFERENT MOTIONS,  
19 INCLUDING TO DISQUALIFY ME FROM THE CASE, THAT  
20 JUST DELAYED THINGS. SO I WANT YOU TO KNOW, IT'S  
21 NOT AS MYOPIC AS YOU THINK.

22 MS. CROWTHER: OBJECTION. THAT  
23 CHARACTERIZATION IS SO FAR OUT OF LINE.

24 MR. RICHARDS: WHAT PART WAS OUT OF  
25 LINE?

0716

1 MS. CROWTHER: ALL OF IT.

2 MR. RICHARDS: OH, COME ON.

3 ROBYN --

4 MS. CROWTHER: YOU NOTICED HIS  
5 DEPOSITION IN JULY, AND YOU DIDN'T ASK ME FOR  
6 ANOTHER DATE UNTIL NOVEMBER, AND YOU NEVER ISSUED  
7 ANOTHER NOTICE.

8 MR. RICHARDS: YOU SAID YOU REFUSED  
9 TO PRODUCE HIM UNTIL --

10 MS. CROWTHER: NO, I DIDN'T.

11 MR. RICHARDS: I CAN SHOW YOU AN  
12 E-MAIL. YOU SAID YOU DON'T HAVE TO PRODUCE HIM  
13 WHILE THERE'S A DEMURER PENDING.

14 MS. CROWTHER: NO, I NEVER SAID  
15 THAT. THAT IS FALSE.

16 MR. RICHARDS: WE HAD TO GO TO  
17 COURT WHEN YOU -- WE HAD TO GO TO COURT AND GET AN  
18 ORDER COMPELLING HIS DEPO.

19 MS. CROWTHER: YOU HAD TO GET AN  
20 ORDER COMPELLING HIM TO HAPPENED TODAY AND  
21 YESTERDAY, WHICH I OFFERED TO MAKE AVAILABLE TO

22 YOU.

23 SO DON'T BE MISREPRESENTING TO MY  
24 CLIENT THAT THIS IS MY FAULT.

25 MR. RICHARDS: I'M GOING TO -- WHAT

0717

1 I'M GOING TO DO IS I'M GOING TO SEND THE WHOLE  
2 E-MAIL STRING TO MY CLIENTS AND TELL THEM TO START  
3 E-MAILING JOWDY, AND THEY CAN LOOK AT IT.

4 MS. CROWTHER: YOU CAN SEND IT  
5 DIRECTLY TO MY CLIENT. AND YOU'RE ASSUMING HE  
6 NEVER SAW IT BEFORE. GO AHEAD.

7 MR. RICHARDS: I CAN? I CAN SEND  
8 IT DIRECTLY?

9 MS. CROWTHER: YES. YOU GO AHEAD.

10 MR. RICHARDS: I WILL.

11 THE DEPONENT: MR. RICHARDS, IF I  
12 CAN MAKE A COMMENT.

13 BY MR. RICHARDS:

14 Q. YEAH.

15 A. I BELIEVE THAT -- I'M HAPPY YOU'VE  
16 GOTTEN TO THE POINT WHERE YOU THINK THAT A  
17 RESOLUTION IS BEST FOR ALL. I THINK THAT --

18 Q. I'M HORRIFIED LISTENING TO THIS.  
19 REALLY, THIS IS HORRIFYING. I'VE GOT THIS WHOLE  
20 TESTIMONY -- WHAT I'VE SEEN WITH THESE FOUR YEARS  
21 IS ABSOLUTELY -- THIS OCCURRED LONG BEFORE ROBYN  
22 AND I GOT INVOLVED, BUT THERE -- IT'S AMAZING THE  
23 SCHISM THAT HAS BEEN CREATED.

24 A. I AGREE.

25 Q. AND IT'S TOTALLY SENSELESS. IT'S

0718

1 LIKE THE ARABS AND THE ISRAELIS.

2 A. I AGREE. I AGREE 100 PERCENT.

3 BUT YOU'VE GOTTEN TO THIS POSITION.  
4 UNFORTUNATELY, YOU'VE -- I'M NOT SAYING YOU, BUT A  
5 BOMB WAS DROPPED, AND THE NUCLEAR BOMB WENT OFF,  
6 AND NOW WHEN THE ASHES KIND OF SETTLE, YOU WANT TO  
7 TALK.

8 IT'S DIFFICULT FOR ME TO DO THAT AT  
9 THAT POINT. I WISH THAT WE HAD THIS DISCUSSION.  
10 I WISH WE GOT TO THIS POINT BEFORE THAT HAPPENED.

11 SO I APOLOGIZE IF SOMETIMES I GET  
12 IRRITATED OR DISGUSTED OR DON'T SEEM LIKE I GIVE  
13 THE RIGHT WEIGHT TO THE PEOPLE THAT HELPED GET THE  
14 PROJECT TO THIS POINT. I DO. BUT A LOT OF THINGS  
15 HAVE HAPPENED TO JADE MY OUTLOOK ON THAT AND ON  
16 THOSE PEOPLE.

17 AND IF WE CAN GET PAST THAT, WHICH  
18 I HOPE THAT WE CAN, AND JUST SAY, "LOOK, WE NEED  
19 TO MOVE FORWARD," I'D LIKE TO GET -- I'D LIKE TO

20 DO THAT. BUT THAT'S WHY I WANT TO JUST MAKE SURE  
21 THAT I'M CLEAR WITH YOU ON THAT.

22 Q. AND WITH RESPECT TO THAT, AT THE  
23 ARBITRATION, WHEN I GAVE MR. NAJAM A SUBPOENA TO  
24 PRODUCE THE RECORDS, HE SAID HE WOULD COMPLY AND  
25 PRODUCE THEM. AND THIS IS LONG BEFORE THE

0719

1 LAWSUIT.

2 AND I'M NOT -- AT THIS POINT I  
3 AGREE, IT'S WAY PAST FINGER-POINTING. BUT I'M  
4 LETTING YOU KNOW, FOR WHATEVER REASON, MAYBE IT  
5 WAS BECAUSE OF WHAT HAPPENED PRIOR TO ME GETTING  
6 INVOLVED, THERE WAS A TREMENDOUS AMOUNT OF  
7 RESISTANCE JUST TO GET BASIC ACCESS TO  
8 INFORMATION.

9 SO IT'S UNFORTUNATE THAT THIS  
10 OCCURRED, BUT I THINK THAT, REALISTICALLY, YOU  
11 KNOW, MY CLIENTS WILL TELL YOU THEMSELVES AT THE  
12 MEDIATION IS THAT THEY WANT TO SEE THE MOST RETURN  
13 ON THEIR INVESTMENT, AND THEY DON'T WANT THE  
14 PROPERTY TO BE LOST IN SOME SORT OF FORECLOSURE.

15 BECAUSE YOU MAY BE FRIENDLY WITH  
16 DANSKE NOW, BUT THEY'RE NOT GOING TO BE YOUR  
17 FRIENDS IF THEY JUST WANT TO JUST TAKE THE  
18 PROPERTY BACK. YOU KNOW, YOU'RE REALLY AT THEIR  
19 MERCY.

20 SO THIS DISTRACTION IS NOT HELPING  
21 ANYBODY. LIKE, I DON'T CARE WHO'S RIGHT OR WRONG  
22 ANYMORE IN THIS ARGUMENT BECAUSE I'M TELLING YOU  
23 UNEQUIVOCALLY, I'M GENERATING E-MAILS AND LETTERS  
24 TO MY CLIENTS THAT THEY HAVE TO SETTLE THIS CASE.

25 SO, YOU KNOW, WHATEVER YOU NEED TO

0720

1 DO TO GET EVERYBODY ON BOARD, YOU HAVE -- YOU KNOW  
2 WHAT I WAS GOING TO TELL YOU ON A SEPARATE NOTE,  
3 YOU HAVE THESE HOCKEY PLAYERS THAT INVESTED IN THE  
4 FIRST DEAL.

5 AND RATHER THAN LEAVING THEM  
6 WITHOUT SOME SORT OF EQUITY, I THINK THAT IF WE  
7 INCORPORATE THEM INTO THE CABO DEAL, THEY WOULD BE  
8 VERY GOOD ENDORSERS OF THE PROJECT.

9 THEY HAVE A VERY GOOD BRAND  
10 RECOGNITION, AND THEY WOULD BE -- YOU KNOW, YOU'D  
11 GET A LOT OF FREE MILEAGE WITH THE MARKETING  
12 BUDGET THAT YOU DON'T REALLY HAVE NOW.

13 SO I THINK THAT -- YOU KNOW, I  
14 DIDN'T GO TO BUSINESS SCHOOL AS WELL AS LAW SCHOOL  
15 NOT TO COME UP WITH SOLUTIONS, BUT IN THIS CASE, I  
16 THINK THAT, YOU KNOW, IT SADDENS ME THAT THIS HAS  
17 COME TO THIS POINT.

18 SO I'M VERY SERIOUS WHEN I TELL YOU  
19 THAT I'M IN CONTROL MYSELF, AND THAT UNEQUIVOCALLY  
20 WE ARE GOING TO TRY VERY HARD TO SETTLE THIS CASE  
21 WHEN WE HAVE THIS MEDIATION.

22 BUT I THINK YOU NEED TO START  
23 THINKING OF A LOT OF DIFFERENT POSSIBILITIES  
24 BECAUSE YOU HAVE A LOT OF DIFFERENT PERSONALITIES.

25 BY THE WAY, IF TOMMY CONSTANTINE  
0721

1 WANTS TO VISIT THE PROPERTY BY HIMSELF, IS HE  
2 ALLOWED TO VISIT THE PROPERTY?

3 A. I WOULD RATHER HE DIDN'T.

4 Q. SO IT'S NOT OPEN TO THE PUBLIC, THE  
5 GOLF COURSE?

6 A. IT'S OPEN TO THE PUBLIC.

7 I WOULD LIKE TO -- IF

8 TOMMY CONSTANTINE WANTED TO SIT DOWN WITH ME AT  
9 SOME POINT AND GIVE ME A CALL AND WANTED TO TALK  
10 TO ME, THEN I WOULD SAY, "LET'S HAVE A  
11 CONVERSATION AND LET'S GET IT ALL OUT."

12 Q. YEAH. I CAN TELL YOU, JUST AS  
13 SOMEONE THAT DOESN'T REALLY KNOW ANY OF YOU THAT  
14 WELL, YOU GUYS NEED TO ALL SIT DOWN AND TALK  
15 CALMLY.

16 BECAUSE THIS IS -- YOU GUYS HAVE SO  
17 MUCH INVESTED IN THIS DEAL, THAT IT'S -- THAT TWO  
18 LAWYERS FROM L.A. ARE NOT GOING TO BE ABLE TO  
19 RESOLVE THESE ISSUES IN MEXICO. I'M JUST TELLING  
20 YOU THAT IT'S A JOKE.

21 A. I UNDERSTAND THAT. I'M TALKING  
22 VERY CALMLY TO YOU, AND I JUST DON'T WANT YOU TO  
23 UNDERESTIMATE WHAT THE MAN SITTING NEXT TO YOU HAS  
24 DONE.

25 I MEAN -- AND I GIVE ALL THE  
0722

1 CREDIT, AND I DON'T WANT TO SOUND LIKE I DON'T  
2 HAVE THAT IN ME TO BE APPRECIATIVE FOR WHAT HAD  
3 TRANSPIRED. BUT, UNFORTUNATELY, OVER THE LAST  
4 COUPLE OF YEARS, IT'S HARD FOR ME TO THINK OF HIM  
5 IN A GOOD LIGHT.

6 Q. WELL -- AND I THINK AT THIS POINT  
7 IT'S NOT REALLY CRITICAL TO RESOLVING THIS MATTER.

8 WHAT'S CRITICAL IS THAT YOU HAVE 19  
9 OTHER INNOCENT PEOPLE THAT DIDN'T DO ANYTHING BUT  
10 INVESTED MONEY IN YOUR PLACES AND WOULD LIKE TO  
11 GET THEIR MONEY BACK OR SEE SOME SORT OF EXIT  
12 STRATEGY.

13 A. AND IF THEY HAD THAT CONVERSATION  
14 WITH ME ON JUNE 15TH, I WOULD SAY, "YES, THEY  
15 DIDN'T DO ANYTHING."

16 BUT THOSE 19 PEOPLE DID DO  
17 SOMETHING TO ME PERSONALLY AND TO THE PROJECT.  
18 THEY DID.

19 AND WHOEVER WAS A PART OF IT, THAT  
20 HAPPENED. AND THERE WERE MANY THINGS THAT WERE  
21 WRITTEN IN THAT LAWSUIT THAT WERE COMPLETELY  
22 UNTRUE.

23 AND I KNOW THEY DON'T HAVE ANY  
24 PERSONAL KNOWLEDGE OF IT. AND I KNOW IF I TALK TO  
25 EACH ONE, THEY MAY NOT EVEN HAVE KNOWN THAT IT WAS

0723  
1 THERE. I DON'T KNOW IF THEY ALL PUT THEIR NAME ON  
2 EACH AND THEY KNOW EVERY STATEMENT IN THERE.

3 BUT I KNOW THEY DON'T KNOW THEM TO  
4 BE TRUE. AND THAT'S HURTFUL. WHEN SOMEONE SAYS  
5 SOMETHING ABOUT YOU, AND THEY KNOW IT'S NOT TRUE,  
6 OR AT LEAST THEY KNOW THEY HAVE NO PERSONAL  
7 KNOWLEDGE, AND THEY CREATE A FEDERAL DOCUMENT,  
8 THAT'S PUT MY LIFE --

9 Q. FEDERAL DOCUMENT?

10 A. WELL, A DOCUMENT THAT'S WITH THE  
11 COURT.

12 Q. RIGHT. OKAY.

13 A. SORRY. BUT NOW IT'S CAUSED A  
14 FEDERAL INVESTIGATION THAT'S PUT MY LIFE IN  
15 TURMOIL, THAT I DON'T KNOW IF I CAN RECOVER FROM.  
16 I REALLY DON'T.

17 AND I WISH THAT THEY HAD SOME  
18 RESPONSIBILITY BEFORE THEY DID THAT, BEFORE THEY  
19 PUT THOSE THINGS IN THAT DOCUMENT THAT ARE NOT  
20 TRUE.

21 I WISH THAT YOU -- I WISH THAT YOU  
22 INVESTIGATED WHETHER THESE THINGS WERE TRUE. VERY  
23 SIMPLE THINGS WERE TRUE. I WISH THAT YOU DID  
24 THAT.

25 BUT IT DIDN'T HAPPEN. BUT, AGAIN,  
0724

1 WE HAVE TO LOOK FORWARD. AND I -- I THINK THAT  
2 THERE'S A WAY TO RESOLVE THIS. EVERYONE NEEDS TO  
3 BE REASONABLE, INCLUDING MYSELF.

4 I'LL DO THE BEST I CAN AND --

5 Q. WELL, I CAN TELL YOU THE FASTEST  
6 WAY TO CLOSE OUT THESE INVESTIGATIONS THAT YOU  
7 TESTIFIED TO IS TO ELIMINATE ANYBODY CONTENDING  
8 THAT THEY'RE A VICTIM OF ANYTHING.

9 I CAN TELL YOU THAT'S THE FASTEST  
10 WAY TO CLOSE THEM OUT. BECAUSE YOU HAVE NOBODY  
11 CLAIMING A LOSS. SO THAT'S -- THERE'S NO --  
12 NOTHING TO INVESTIGATE ANYMORE.

13 A. I AGREE WITH YOU.



14 Q. SO -- SO I THINK THAT -- THAT, YOU  
15 KNOW, A LOT OF MONEY IS -- ONE THING I CAN TELL  
16 YOU THAT IS MISSING IS I STILL -- AND I'VE BEEN  
17 HERE WITH YOU FOR TWO DAYS -- I DON'T KNOW WHAT  
18 HAPPENED TO 37 MILLION DOLLARS.

19 IT'S LIKE IN A DIVORCE. YOU DON'T  
20 LIKE WHEN YOUR EX-WIFE AND HER LAWYERS GO THROUGH  
21 ALL YOUR ASSETS TO FIGURE OUT WHERE YOU SPENT THE  
22 MONEY.

23 AND YOU MAY BE THE MOST HONEST  
24 SPOUSE IN THE WORLD, BUT THEY'RE ENTITLED TO  
25 VERIFY EVERYTHING.

0725

1 AND SO IN THIS CASE IT HAS BEEN  
2 DIFFICULT JUST TO GET SOME CLARITY AS TO HOW THIS  
3 37 MILLION WAS SPENT.

4 AND I THINK THAT IF WE CAN COME UP  
5 WITH THE -- SOME TRANSPARENCY, YOU'RE NOT GOING TO  
6 BE -- YOU'RE NOT GOING TO HAVE TO GO BACK AND  
7 FORTH ANYMORE.

8 I MEAN, I REALLY THINK THAT  
9 SOMETIMES WHEN PEOPLE HAVE A WAR OR A FIGHT, YOU  
10 REALLY CAN'T LOOK AT WHO THREW THE FIRST STONE OR  
11 WHAT WENT WRONG, BUT YOU HAVE RATIONAL DETACHED  
12 PEOPLE.

13 MY LAWYER AND YOUR LAWYER ARE NOT  
14 PART OF THIS LAWSUIT. WE DON'T HAVE A VESTED  
15 INTEREST. I'M NOT ON A CONTINGENCY. I DON'T CARE  
16 IF YOU SETTLE TOMORROW. IT'S NOT GOING TO AFFECT  
17 MY LIFE.

18 YOU KNOW, I ONLY WANT WHAT'S IN THE  
19 BEST INTEREST OF MY CLIENTS. AND THEY ALL KNOW MY  
20 POSITION. SETTLE THIS LAWSUIT WITH YOU.  
21 THAT'S -- THAT'S MY OPEN ADVICE.

22 SO I HAVE NO INTEREST IN SPENDING  
23 ANOTHER DOLLAR ON LITIGATION.

24 BUT WHAT I DO HAVE AN INTEREST IN  
25 IS MAKING SURE THEY'RE COMFORTABLE THAT WHEN THEY

0726

1 WANT TO GET ACCESS TO THE BUDGETS, TO HOW THIS  
2 MONEY IS BEING SPENT, THAT THEY GET ACCESS TO IT  
3 EITHER ON THE WEB SITE WITH A PASSWORD OR SOME WAY  
4 THEY CAN SEE WHAT'S GOING ON.

5 OR YOU JUST MAIL STATEMENTS.  
6 WHATEVER IS NORMAL CORPORATE PROTOCOL. AND THEY  
7 FEEL LIKE THEY'RE NOT -- THEY DON'T HAVE ANY  
8 CONTROL OVER THEIR INVESTMENT, YOU KNOW.

9 AND I THINK THAT THAT WOULD BE THE  
10 BEST WAY TO -- YOU KNOW, TO RESOLVE -- TO RESOLVE  
11 THIS. I'M JUST GIVING YOU SOME IDEAS BEFORE I --

12 SINCE I WON'T GET TO SPEAK TO YOU UNTIL THE  
13 MEDIATION.

14 BUT I CAN TELL YOU, THERE'S NOBODY  
15 ON THIS SIDE OF THE TABLE FROM THE LEGAL SIDE THAT  
16 IS TRYING TO PROLONG THIS LITIGATION. WE ONLY  
17 WANT TO SETTLEMENT.

18 I CAN SHOW YOU E-MAILS, SINCE I'M  
19 ALLOWED TO SEND THEM ALL TO YOU. I'VE SENT  
20 MS. CROWTHER E-MAILS VERY EARLY ON. WE NEED TO  
21 GET THESE PEOPLE IN A ROOM.

22 I KNOW THERE WAS THIS ISSUE ABOUT  
23 THE PLAYERS. AND JUST SO YOU'RE NOT THINKING  
24 THERE'S SOMETHING BEING HIDDEN, JUST SOME OF THESE  
25 PLAYERS ARE OUT OF MONEY. THEY JUST CAN'T FLY

0727

1 HERE FOR EVERY SORT OF THING.

2 YOU KNOW, AND IT'S NOT LIKE THEY  
3 DON'T WANT TO SETTLE, BUT I THINK LIKE IF A  
4 MAJORITY OR -- ARE IN AGREEMENT, THEY'RE WILLING  
5 TO GO ALONG WITH IT.

6 I'LL GET DOCUMENTS, YOU KNOW, TO  
7 SUGGEST -- THAT WILL SUPPORT THAT REPRESENTATION  
8 BECAUSE I TALKED TO THEM ALL. BUT THEY'RE LIKE,  
9 "LOOK, I DON'T HAVE ENOUGH MONEY TO FLY HERE. IF  
10 THE OTHER GUYS ARE GOOD WITH IT, I'M GOOD WITH IT,  
11 BECAUSE WE'RE ALL WORKING TOGETHER."

12 I WOULDN'T HAVE TAKEN THE CASE IF I  
13 WAS GOING TO HAVE 19 OPINIONS. SO, YOU KNOW, WE  
14 HAVE SORT OF A STRUCTURE LIKE THAT. AND SO THAT'S  
15 WHY I AGREE WITH YOU.

16 AND I THINK IT'S A VERY GOOD IDEA  
17 THAT YOU BELIEVE THAT WE SHOULD ALL SETTLE WITH  
18 EVERYBODY BECAUSE THAT'S WHAT WE WANT TO DO, IS  
19 SETTLE ALL THESE LAWSUITS, YOU KNOW, AND -- THAT'S  
20 RIGHT.

21 AND YOU'VE GOTTEN YOUR NICKS IN  
22 THERE, TOO. IT WASN'T HELPFUL WHEN YOU TESTIFIED  
23 IN KENNER'S ARBITRATION. AND THE 2 MILLION DOLLAR  
24 JUDGMENT THAT YOU REFER TO, THAT REALLY IS FOR ONE  
25 TRANSACTION, IRONICALLY, THAT THE MONEY WAS WIRED

0728

1 TO YOU. THAT'S THE IRONY OF THE WHOLE THING.

2 YOU GUYS ARE STILL JOINED AT THE  
3 HIP, JUST IN A LEGAL SENSE. BUT EVERYTHING ELSE,  
4 KENNER WAS FOUND NOT LIABLE ON. THESE WERE ISSUES  
5 WHETHER HE SHOULD HAVE MADE THESE INVESTMENTS.

6 SO THAT ONE TRANSACTION TO YOU IS  
7 HIS BALLYHOO.

8 A. I UNDERSTAND THAT. I DIDN'T -- I  
9 DIDN'T GO THERE TO BE HELPFUL OR NOT HELPFUL. I

10 WENT THERE TO TELL THE TRUTH. AND TO BE HONEST,  
11 YOU WERE -- YOU -- YOUR CROSS-EXAMINATION, YOU  
12 COULDN'T HAVE DONE A BETTER JOB IF YOU WERE MY  
13 LAWYER. THAT'S WHAT WAS SURPRISING -- WHEN  
14 THIS -- WHEN YOU FILED THIS CASE AGAINST ME.

15 Q. WELL, DIFFERENT -- THERE'S  
16 DIFFERENT HEARINGS, DIFFERENT INTERESTS.

17 A. WELL, YOU DID A GOOD JOB. I  
18 APPRECIATE IT.

19 Q. I DID DO A GOOD JOB BECAUSE THE  
20 ARBITRATION PANEL, THREE JUDGES FOUND THAT HE  
21 WASN'T LIABLE FOR THAT INVESTMENT, YOU KNOW, FOR  
22 RECOMMENDING THAT INVESTMENT.

23 A. I SAID YOU DID A GOOD JOB.

24 Q. YEAH. I MEAN, THEY WERE ASKING FOR  
25 A LOT MORE THAN WHAT THEY GOT, AND THAT HAS NOT

0729

1 BEEN CONFIRMED YET.

2 JUST -- I KNOW YOU SAID IT WAS A  
3 JUDGMENT. RIGHT NOW IT'S JUST AN AWARD. THERE'S  
4 SOME LEGAL PROBLEMS WITH THAT JUDGMENT THAT HAVE  
5 ARISEN DUE TO THE ATTORNEY THAT WAS INVOLVED IN  
6 THE CASE.

7 BUT, ANYWAY, I HAVE TO COPY --  
8 WHICH I HAVE IN MY THING, TO COPY THE EXHIBITS.  
9 SO I'M JUST GOING TO COPY THEM NOW. BECAUSE I  
10 KNOW YOU LIKE TO GET OUT OF HERE RIGHT ON TIME. I  
11 WANT TO SAVE THREE MINUTES FOR THE COPYING OF THE  
12 EXHIBITS.

13 MS. CROWTHER: WELL, YOU DON'T HAVE  
14 TO TAKE THAT OUT OF YOUR TIME ON THE DEPO. BUT  
15 YOU HAVE THREE MINUTES BEFORE WE'RE GOING OFF THE  
16 RECORD.

17 THE DEPONENT: HE WAS GOING OFF THE  
18 RECORD.

19 MR. RICHARDS: OH, OKAY. I --

20 THE DEPONENT: CAN I SAY SOMETHING  
21 WHILE WE'RE ON THE RECORD?

22 MR. RICHARDS: YEAH.

23 THE DEPONENT: AND SINCE YOU  
24 BROUGHT UP THE -- THE NOLAN ARBITRATION, I WANT TO  
25 CORRECT THE MISTAKE THAT I MADE THERE.

0730

1 BY MR. RICHARDS:

2 Q. OKAY.

3 A. WHEN YOU HAD ASKED ME ABOUT CAPITAL  
4 ACCOUNTS, I WAS -- BECAUSE I WENT BACK AND READ  
5 THAT TESTIMONY.

6 I SAID THAT THE CAPITAL ACCOUNTS  
7 WERE ZERO, AND THEY'RE NOT ZERO. THEY'RE WHAT

8 THEIR INVESTMENT IS. I JUST WANT TO BE CLEAR AND  
9 ON THE RECORD FOR THAT.

10 Q. IS THAT DIAMANTE DEL MAR?

11 A. YES.

12 Q. OKAY. THAT RECORD IS OVER WITH,  
13 BUT, YEAH --

14 A. NO. I WANT TO BE -- SO YOU  
15 DON'T -- SO YOU DON'T THINK THAT I THINK THAT.  
16 AND I JUST DON'T KNOW IF -- YOU  
17 KNOW, TO ME, WHEN I -- WHEN I HAD MADE THAT  
18 MISTAKE AND THIS HAPPENED, I'M THINKING, WELL,  
19 MAYBE THAT WAS THE -- ONE OF THE REASONS. I  
20 DIDN'T KNOW.

21 SO WHEN -- IT DIDN'T COME UP TODAY,  
22 SO I JUST WANTED TO CLEAR IT SO YOU KNOW.

23 Q. WELL, IT'S INTERESTING THAT YOU SAY  
24 THAT BECAUSE WHEN YOU SAID THEIR CAPITAL ACCOUNTS  
25 WERE ZERO, THAT WAS WHEN I BELIEVED THAT SOMEHOW A

0731

1 FRAUD WAS BEING PERPETRATED.

2 BECAUSE YOU TESTIFIED THAT THEIR  
3 CAPITAL ACCOUNTS WENT TO ZERO, SO MY ADVICE WAS  
4 ALL YOUR MONEY HAS BEEN TAKEN BECAUSE THE MANAGER  
5 TESTIFIED -- SURE.

6 IT WOULD HAVE BEEN HELPFUL IF YOU  
7 WOULD HAVE WRITTEN ME A LETTER AFTER THE  
8 DEPOSITION AND SAID -- OR NOT AFTER THE -- AFTER  
9 YOUR TESTIMONY AND SAID, "YOU KNOW, I MADE A GRAVE  
10 MISTAKE. I ERRONEOUSLY WIPE OUT MILLIONS OF  
11 DOLLARS OF CAPITAL ACCOUNTS IN MY TESTIMONY, AND  
12 THAT WAS A MISTAKE."

13 THAT REALLY WOULD HAVE BEEN HELPFUL  
14 TO ME BECAUSE THEN I MAY HAVE ANALYZED THEIR  
15 POSITION DIFFERENTLY.

16 A. OKAY.

17 Q. SO -- I MEAN -- AND, AGAIN, IT'S  
18 NOT A PERFECT PROCESS, BUT I THINK AT THIS POINT  
19 WE'RE IN A GRAVE SITUATION WITH THIS LOAN BEING  
20 EXTENDED, BECAUSE I DON'T THINK 4 MILLION IS GOING  
21 TO CUT IT, REALLY, ON THIS PROJECT. ESPECIALLY  
22 UNDER A CLOUD OF LITIGATION.

23 I THINK -- I THINK THAT EVEN A  
24 MONTH MORE OF THIS IS TOO MUCH. YOU KNOW. AND  
25 THEN -- SO IT'S -- WHAT I'D LIKE TO DO IS --

0732

1 THAT'S WHY I'D LIKE TO REALLY GET -- REALLY GET  
2 THAT ORGANIZED.

3 BUT I'M GLAD YOU CLARIFIED THAT.  
4 THEY'LL BE -- MY CLIENTS WILL BE RELIEVED TO KNOW  
5 THAT THEY STILL HAVE CAPITAL ACCOUNTS SOMEWHERE.

6 IS THERE STILL -- IS THE DIAMANTE  
7 DEL MAR PROPERTY OPEN FOR VISITATION BY ANYBODY?  
8 A. YES.  
9 Q. DO YOU NEED TO GET PERMISSION TO GO  
10 THERE FIRST?  
11 A. NO. I MEAN, IF YOU'RE GOING TO FLY  
12 THERE, YOU NEED TO JUST ALERT -- IT WOULD BE  
13 HELPFUL TO TELL ME.  
14 Q. IS THE -- DO YOU HAVE TO GO THROUGH  
15 CUSTOMS WHEN YOU LAND THERE?  
16 A. YOU GO THROUGH CUSTOMS IN ENSENADA  
17 OR SAN FELIPE.  
18 Q. OH, SO YOU LAND THERE FIRST AND  
19 THEN GET OUT ON A FLIGHT -- YOU CAN'T FLY DIRECTLY  
20 IN?

21 A. NO.  
22 MS. CROWTHER: IT'S NOW 6:30.  
23 MR. RICHARDS: OKAY. I'M GOING TO  
24 START COPYING.  
25 DEPOSITION OFFICER: I NEED A

0733

1 STIPULATION.  
2 MR. RICHARDS: ROBYN, WHY DON'T YOU  
3 TAKE A STAB AT THE STIPULATION WHILE I'M DOING  
4 THIS.  
5 MS. CROWTHER: I'M WILLING TO  
6 STIPULATE THAT THE COURT REPORTER WILL BE RELIEVED  
7 OF HER DUTY UNDER THE CODE OF CIVIL PROCEDURE TO  
8 MAINTAIN THE ORIGINAL OF THE TRANSCRIPT;  
9 THAT THE ORIGINAL WILL BE SENT TO  
10 ME, AND I WILL PROVIDE IT TO MR. JOWDY, FOR HIS  
11 REVIEW;  
12 THAT HE WILL HAVE 30 DAYS TO MAKE  
13 ANY CHANGES. AND I WILL NOTIFY MR. RICHARDS OF  
14 ANY SUCH CHANGES.  
15 IF I HAVE NOT NOTIFIED HIM OF ANY  
16 CHANGES WITHIN 30 DAYS, IT WILL BE ASSUMED THAT  
17 THERE ARE NONE;  
18 THAT MR. JOWDY CAN SIGN HIS  
19 TRANSCRIPT UNDER PENALTY OF PERJURY.  
20 I WILL MAINTAIN THE ORIGINAL AND  
21 MAKE IT AVAILABLE UPON REQUEST. AND THAT IF THE  
22 ORIGINAL IS LOST OR DESTROYED FOR ANY REASON, A  
23 CERTIFIED COPY MAY BE USED IN ITS PLACE.  
24 MR. RICHARDS: OKAY. JUST -- THAT  
25 WAS VERY GOOD, ROBYN.

0734

1 A COUPLE MORE THINGS FOR THE  
2 RECORD.  
3 MS. CROWTHER: DO YOU AGREE TO

4 THAT? ARE WE SO STIPULATED AS TO THAT?  
5 MR. RICHARDS: YEAH, BUT I JUST --  
6 BEFORE I AGREE TO IT, I JUST WANT TO CLARIFY WHERE  
7 I BELIEVE WE'RE AT JUST SO WE'RE ON THE SAME PAGE.  
8 MS. CROWTHER: WELL -- OKAY.  
9 MR. RICHARDS: AND THEN I'LL AGREE  
10 TO IT.  
11 MS. CROWTHER: BUT I MIGHT NOT  
12 AGREE TO WHAT YOU'RE ABOUT TO SAY. SO IF WE CAN  
13 AGREE FOR THE COURT REPORTER'S BENEFIT AND THEN --  
14 MR. RICHARDS: WELL, I'M NOT  
15 RELIEVING THE COURT REPORTER YET. BUT I JUST WANT  
16 TO MAKE SURE.  
17 MS. CROWTHER: SORRY.  
18 MR. RICHARDS: OKAY. I DON'T WANT  
19 TO FALL INTO THAT PROCEDURAL TRAP. THE -- THE --  
20 AS YOU'RE -- AS AWARE, THERE'S JUST A COUPLE  
21 THINGS. SOME HOUSEKEEPING ISSUES.  
22 WE HAVE A DISPUTE RELATED TO THE  
23 DISCOVERY PRODUCTION IN THIS CASE. AND I'M NOT  
24 GOING TO LITIGATE IT ON THE RECORD, BUT I'M GIVING  
25 YOU SOME -- I'M GIVING YOU SOME MOTIONS THAT WE  
0735  
1 FILED RELATED TO THE DISCOVERY PURSUIT.  
2 AND I'M GIVING YOU A SUBPOENA FROM  
3 CASE NUMBER YC 058700. THAT'S TO KEN JOWDY.  
4 (DOCUMENT HANDED TO THE DEPONENT.)  
5 MR. RICHARDS: THE -- THE  
6 DEPOSITION -- I'VE COVERED MOST OF THE DOCUMENTS  
7 THAT YOU PRODUCED IN THIS CASE, EXCEPT FOR, I'D  
8 SAY, ANOTHER 800 E-MAILS THAT WERE PROVIDED.  
9 SOME OF THEM MAY BE DUPLICATES, SO  
10 I'M NOT GOING TO ASK HIM ABOUT THOSE AGAIN, BUT I  
11 NEED TO FINISH GOING THROUGH THEM.  
12 AND YOU REPRESENTED TO MY OFFICE  
13 THAT WE HAVE ADDITIONAL DISCOVERY AND THERE'S  
14 DOCUMENTS ON CABO SAN LUCAS DEALING WITH HOW THE  
15 37 MILLION DOLLARS WAS SPENT.  
16 ALL THOSE DOCUMENTS, WE DON'T HAVE.  
17 AND WE DON'T HAVE -- WE DON'T HAVE ANY OF THOSE  
18 DOCUMENTS. AND SO WE NEED TO GET THOSE DOCUMENTS,  
19 AS WELL AS THE DETAIL OR BACKUP ON THE FINANCIALS  
20 THAT HE PROVIDED, LIKE THE AMERICAN EXPRESS BILLS  
21 AND STUFF.  
22 AND I'D LIKE TO TRY TO GET THOSE  
23 BEFORE WE HAVE ANY FURTHER DEPOSITION DAYS JUST SO  
24 I CAN FINISH THE DEPOSITIONS.  
25 IF -- WE WERE SUCCESSFUL LAST TIME  
0736  
1 IN MEETING AND CONFERRING, BUT WE DO HAVE THIS

2 ISSUE ABOUT NONE OF THE DOCUMENTS MR. JOWDY'S  
3 PROVIDED US ARE UNDER OATH, SO -- AS FAR AS  
4 THEY'RE NOT VERIFIED.

5 SO HE CAN LITERALLY SAY, "THOSE  
6 DOCUMENTS HAVE NOTHING TO DO WITH ME" BECAUSE HE'S  
7 NEVER -- THERE'S BEEN NOBODY FROM THE DEFENDANTS  
8 THAT HAVE VERIFIED IT. SO THAT'S WHAT I -- THAT'S  
9 WHAT I WANTED TO TELL YOU.

10 AND SO BASICALLY I'M -- THE DEPO --  
11 HIS DEPOSITION IS NOT ADJOURNED. IT'S MERELY --  
12 IT'S ADJOURNED, BUT IT'S NOT CONCLUDED UNTIL I  
13 HAVE THE OPPORTUNITY TO HAVE THOSE OTHER DOCUMENTS  
14 PRODUCED.

15 I STILL HAVE -- I WAS ESTIMATING,  
16 WITH THE 7,000 DOCUMENTS YOU PROVIDED AND WHATEVER  
17 ELSE YOU'RE GOING TO BE GIVING ME SHORTLY, I  
18 PROBABLY HAVE ANOTHER DAY OR TWO DEALING WITH --  
19 WITH WHAT YOU'VE ALREADY PROVIDED. SO --

20 MS. CROWTHER: WELL, I DON'T THINK  
21 YOU'RE ENTITLED TO ANY MORE TIME.

22 I DIDN'T REPRESENT TO YOUR OFFICE  
23 THAT I HAD MORE DOCUMENTS TO PRODUCE.

24 WHAT I REPRESENTED TO YOUR OFFICE  
25 WAS THAT I HAD A C.D. THAT I HAD TO REVIEW IN

0737

1 ORDER TO DETERMINE WHETHER THERE WERE ANY  
2 DOCUMENTS TO PRODUCE AMONG OTHER THINGS.

3 THAT HASN'T BEEN PRODUCED FOR  
4 PRIVILEGE OR DUPLICATES. SO THEY MIGHT BE  
5 DUPLICATIVE.

6 MR. RICHARDS: RIGHT.

7 MS. CROWTHER: I DON'T THINK YOU'RE  
8 ENTITLED TO ANY MORE TIME ON THE DOCUMENTS WE  
9 PRODUCED ON DECEMBER 7TH.

10 AND SO WE CAN MEET AND CONFER ABOUT  
11 A FURTHER DEPOSITION AT THE APPROPRIATE TIME, BUT  
12 I DON'T AGREE THAT IT'S REMAINING OPEN.

13 MR. RICHARDS: WELL, THE DATE --  
14 THE ORDER SAYS DAY-TO-DAY.

15 MS. CROWTHER: WE'VE HAD OUR  
16 DISCUSSIONS ABOUT THAT, AND WE BOTH READ THE  
17 TRANSCRIPT.

18 MR. RICHARDS: WE NEVER CHANGED IT.

19 MS. CROWTHER: WE BOTH READ THE  
20 TRANSCRIPT, RON.

21 MR. RICHARDS: ALL RIGHT. WELL,  
22 THE E-MAIL, THOUGH -- I WAS ONLY -- I'M NOT SAYING  
23 HE'S ORDERED TO BE HERE AFTER TODAY, BUT I'M  
24 SAYING THE -- THE -- THE E-MAIL THAT YOU SENT ME  
25 SAID THAT WE WILL AGREE ON ANOTHER DAY.

0738

1 I NEVER SAID I ONLY WAS GOING TO  
2 NEED HIM FOR TWO DAYS.

3 MS. CROWTHER: WELL, I SAID I WOULD  
4 MEET AND CONFER WITH YOU AFTER THE TWO DAYS, AND I  
5 WILL.

6 MR. RICHARDS: OKAY.

7 MS. CROWTHER: IN ADDITION, THERE  
8 WAS SOMETHING ELSE THAT WAS PROBLEMATIC IN WHAT --  
9 IN WHAT YOU JUST REPRESENTED.

10 MR. RICHARDS: ALL RIGHT. WELL,  
11 THINK ABOUT IT. TAKE YOUR TIME.

12 MS. CROWTHER: AND -- OH, IT WAS  
13 THAT THE DOCUMENTS WEREN'T UNDER OATH.

14 I BELIEVE THAT WE DID PROVIDE A  
15 VERIFICATION FOR OUR WRITTEN RESPONSES, ALTHOUGH  
16 THEY MAY HAVE ONLY BEEN OBJECTIONS, IN WHICH CASE  
17 WE WOULDN'T HAVE.

18 BUT WE'VE AGREED TO GIVE YOU  
19 SUPPLEMENTAL RESPONSES THAT WILL BE VERIFIED.

20 OH, I KNOW WHAT IT WAS.

21 YOU'VE COMPLAINED THAT THERE AREN'T  
22 ANY DOCUMENTS RELATING TO DIAMANTE CABO SAN LUCAS.

23 IF YOU LOOK AT MY NOVEMBER 5TH  
24 E-MAIL, AS I EXPLAINED, YOU DIDN'T CLAIM THAT YOUR  
25 CLIENTS HAD AN EQUITY INTEREST IN THAT AND,

0739

1 THEREFORE, WE DIDN'T PRODUCE THEM. AND SO UNDER  
2 THE MEET AND CONFER, I DIDN'T AGREE.

3 NOW, I SUSPECT THAT IN CONNECTION  
4 WITH THE MEDIATION, WE'RE GOING TO BE WILLING TO  
5 MAKE AVAILABLE INFORMATION TO YOUR CLIENTS.

6 SO IT MAY BE A DISTINCTION WITHOUT  
7 A DIFFERENCE, BUT WE DID NOT AGREE TO MAKE THOSE  
8 DOCUMENTS AVAILABLE.

9 MR. RICHARDS: YOU AGREE TO MAKE  
10 DOCUMENTS AVAILABLE TO ANY ENTITY THAT RECEIVED  
11 MONEY FROM MY CLIENT.

12 MS. CROWTHER: OH, NO, I DID NOT.  
13 READ MY NOVEMBER 5TH E-MAIL AND  
14 READ THE MEET AND CONFER.

15 I SAID I WOULD MAKE BOOKS AND  
16 RECORDS AVAILABLE FOR ANY ENTITY IN WHICH YOU  
17 CLAIMED YOUR CLIENTS HAD AN EQUITY INTEREST THAT  
18 MR. JOWDY CONTROLLED.

19 AND YOU ONLY IDENTIFIED TWO IN THE  
20 COMPLAINT: BAJA MANAGEMENT AND DIAMANTE DEL MAR.  
21 AND I PRODUCED THOSE RECORDS.

22 YOU'VE NEVER ALLEGED THAT YOUR  
23 CLIENTS HAVE AN EQUITY INTEREST IN DIAMANTE CABO



24 SAN LUCAS, AND THEY DON'T.  
25 SO, AGAIN, THAT'S WHY THEY HAVEN'T  
0740  
1 BEEN PRODUCED, AND I'M SURE IN CONNECTION WITH THE  
2 MEDIATION, THAT WE'RE GOING GIVE YOU SOME OF THAT  
3 INFORMATION.  
4 MR. RICHARDS: ALL RIGHT. WELL,  
5 I -- I THINK THEY DO HAVE AN EQUITY INTEREST  
6 THROUGH THE L.L.C. THAT MR. JOWDY'S TESTIFIED TO.  
7 MS. CROWTHER: THEY HAVE AN  
8 INTEREST IN AN L.C.C. THAT L.L.C. IS NOT A  
9 PLAINTIFF.  
10 IF YOU WANT TO MAKE IT A PLAINTIFF,  
11 WE MIGHT BE IN A DIFFERENT POSITION.  
12 BUT EVEN SO, IT'S NOT WHAT I AGREED  
13 TO. AND I DOCUMENTED WHAT I AGREED TO, AND YOU  
14 DIDN'T OBJECT. SO THAT'S THE PROBLEM. THAT'S WHY  
15 THERE AREN'T ANY RECORDS YET.  
16 MR. RICHARDS: ALL RIGHT. WELL, I  
17 THINK THAT -- I THINK YOU'RE SPLITTING HAIRS.  
18 I THINK THAT HE'S -- REGARDLESS OF  
19 WHETHER WE REQUESTED HIM -- HE'S -- HE IS REQUIRED  
20 TO PRODUCE THEM SIMPLY FOR THE FACT THAT -- THAT  
21 THEY'RE BEING REQUESTED BY PHIL KENNER ON BEHALF  
22 OF MY CLIENTS BECAUSE THE TESTIMONY IS  
23 OVERWHELMING THAT HE HAS 47 PERCENT OF THIS  
24 OPERATION.  
25 MS. CROWTHER: AND HE'S -- HE'S  
0741  
1 COMPLIED WITH HIS OBLIGATIONS TO MR. KENNER. I  
2 DON'T WANT TO ARGUE ABOUT THAT ANYMORE NOW THAT  
3 WE'RE TEN MINUTES PAST THE DEPOSITION TIME.  
4 MR. RICHARDS: OKAY. AND -- THAT'S  
5 FINE.  
6 I MEAN, THE RECORDS IN THIS CASE  
7 ARE NOT ENOUGH. THEY ALSO NEED TO HAVE SOME LEVEL  
8 OF CONTROL THERE. THAT'S -- THAT'S THE OTHER  
9 ISSUE.  
10 MS. CROWTHER: "LEVEL OF" I DON'T  
11 UNDERSTAND.  
12 MR. RICHARDS: CONTROL AT -- IN --  
13 IN HAVING -- IN DECISION-MAKING OF THIS OPERATION.  
14 MS. CROWTHER: WHO NEEDS TO HAVE  
15 THAT?  
16 MR. RICHARDS: MY CLIENTS.  
17 MS. CROWTHER: WELL, I -- WELL, YOU  
18 CAN MAKE THAT ARGUMENT BASED ON WHATEVER LAW OR  
19 DOCTRINE YOU WANT TO. I THINK YOU'RE JUST WRONG.  
20 MR. RICHARDS: ALL RIGHT.  
21 WELL, I MEAN, IT -- IF I HAVE TO --

22 IF I HAVE TO GET AN ASSIGNMENT, WHICH IS VERY -- I  
23 MEAN, THIS IS -- THIS IS WHY WE'RE REALLY PLAYING  
24 PROCEDURAL.

25 IF I CAN JUST GET AN ASSIGNMENT

0742

1 FROM THE L.L.C. TO THE CURRENT PLAINTIFFS AND THEN  
2 THEY'LL HAVE STANDING, IF THAT'S THE ISSUE.

3 MS. CROWTHER: YOU CAN'T DO THAT  
4 WITHOUT MR. JOWDY'S CONSENT UNDER THE VARIOUS  
5 OPERATING AGREEMENTS.

6 MR. RICHARDS: NO. ASSIGNMENT OF  
7 THIS CLAIM. I DON'T NEED HIS CONSENT TO --

8 MS. CROWTHER: IT DOESN'T HAVE TO  
9 DO WITH STANDING. LOOK, THIS IS -- THIS IS TWO  
10 LITIGATORS JUST SPOUTING OFF AT THIS POINT.

11 MR. RICHARDS: ALL RIGHT. LET ME  
12 GET TO THE C.D. HERE.

13 MS. CROWTHER: CAN WE GO OFF THE  
14 RECORD, THEN?

15 MR. RICHARDS: YEAH.

16 WELL, DO YOU WANT TO DO THE  
17 STIPULATION, OR IS THE STIPULATION YOU SAID OKAY?

18 MS. CROWTHER: THE STIPULATION I  
19 SAID IS FINE WITH ME.

20 I UNDERSTAND THAT YOU BELIEVE THAT  
21 YOU HAVE GROUNDS TO DEPOSE MR. JOWDY FURTHER. I  
22 DISAGREE WITH YOU.

23 BUT WE'LL MEET AND CONFER ABOUT  
24 THAT. AND ESPECIALLY SINCE WE'RE MEDIATING, IT  
25 DOESN'T SEEM LIKE WE HAVE TO RESOLVE IT NOW OR

0743

1 THAT IT SHOULD INTERFERE WITH THE COURT REPORTER'S  
2 OBLIGATIONS.

3 MR. RICHARDS: NO. THAT'S FINE.

4 DEPOSITION OFFICER: SO STIPULATED?

5 MR. RICHARDS: SO STIPULATED.

6 THE VIDEOGRAPHER: VERY GOOD.

7 WE'LL GO OFF VIDEOTAPE RECORD AT 6:38 P.M.

8 CONCLUDING TAPE NUMBER 4 OF VOLUME NUMBER II.

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10 (WHEREUPON, AT THE HOUR OF  
11 6:38 P.M., THE PROCEEDINGS  
12 WERE CONCLUDED.)

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0744

1 STATE OF CALIFORNIA )  
 ) SS.  
2 COUNTY OF LOS ANGELES )

3

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6

DEPONENT'S DECLARATION

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10 I CERTIFY UNDER PENALTY OF PERJURY THAT  
11 THE FOREGOING IS TRUE AND CORRECT.

12

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15

16 EXECUTED AT \_\_\_\_\_ ON \_\_\_\_\_.

17

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\_\_\_\_\_  
(SIGNATURE OF DEPONENT)

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22

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24

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0745

1 STATE OF CALIFORNIA )  
 ) SS.  
2 COUNTY OF LOS ANGELES )

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5 I, ALEJANDRIA E. KATE, CERTIFIED SHORTHAND  
6 REPORTER, CERTIFICATE NUMBER 11897, FOR THE STATE  
7 OF CALIFORNIA, HEREBY CERTIFY:

8

9

10

11 THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE ME  
12 AT THE TIME AND PLACE THEREIN SET FORTH, AT WHICH  
13 TIME THE DEPONENT WAS PLACED UNDER OATH BY ME;  
14 THE TESTIMONY OF THE DEPONENT AND ALL  
OBJECTIONS MADE AT THE TIME OF THE EXAMINATION  
WERE RECORDED STENOGRAPHICALLY BY ME AND WERE  
THEREAFTER TRANSCRIBED;

15

THE FOREGOING TRANSCRIPT IS A TRUE AND CORRECT

15 TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN;  
16 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL  
17 FOR NOR RELATED TO ANY PARTY TO SAID ACTION, NOR  
18 IN ANY WAY INTERESTED IN THE OUTCOME THEREOF.  
19 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED  
20 MY NAME THIS 13TH DAY OF JANUARY, 2010.  
21  
22

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ALEJANDRIA E. KATE

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